Petition

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

UNITED STEELWORKERS OF AMERICA,
Petitioner,

v.

EDWARD SADLOWSKI, JR., JOSEPH SAMARGIA,
EDWARD SADLOWSKI, SR., LEONARD S. RUBENSTEIN,
and JAMES MILLER,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Does § 101(a)(2) of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 411(a)(2), which provides that "every member of any labor organization shall have the right to meet and assemble freely with other members [and] to express any views, arguments, or opinions," preclude the membership of a union, acting through democratic process, from adopting a rule prohibiting candidates for union office from accepting campaign contributions from non-members?

2. If so, does § 101(a)(2), to that extent, deprive union members of freedom of association protected by the First Amendment?

LIST OF PARTIES

In addition to the parties listed in the caption, the Secretary of Labor, was a defendant in the district court and an appellee in the court of appeals.

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United Steelworkers of America, AFL-CIO-CLC, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in *Sadlowski v. United Steelworkers*, No. 81-138.

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the federation of national and international unions with which USWA is affiliated, supports the request for a writ of certiorari. This petition, which is the joint product of USWA and the AFL-CIO, reflects the identify of their views on the issues presented, and their desire to minimize the burdens on the Court by stating their common position only once.

OPINIONS BELOW

The opinion of the district court is unreported, and is reprinted as App. B. The opinion and judgment of the court of appeals is as yet unreported, and is reprinted as App. A.

JURISDICTION

The court below issued its opinion and judgment in this case on March 31, 1981. On June 19, 1981, Chief Justice Burger entered an order extending the time for filing this petition to and including August 28, 1981. (A copy of that order is reprinted as App. C.) This Court has jurisdiction to review the judgment of the court below pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 101(a)(2) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 411(a)(2), provides as follows:

> (2) FREEDOM OF SPEECH AND ASSEMBLY.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

The First Amendment to the United States Constitution provides in pertinent part as follows:

> Congress shall make no law . . . abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATEMENT OF THE CASE

Introduction

The court below struck down a rule, duly adopted by democratic decision of the members of United Steelworkers of America ("USWA"), that prohibits candidates for USWA International Office from accepting campaign contributions from non-members. Through this rule, the members of USWA had sought to insure that candidates for high union office will not be beholden to outside interests but will, instead, be beholden only to the interests of the union members they are elected to serve.

The lower court held that the rule violates the "free speech" provision of the LMRDA, § 101(a)(2), 29 U.S.C. § 411(a)(2). And the court rejected the union's argument that as thus construed § 101(a)(2) deprives USWA members of their right under the First Amendment to exclude non-member participation in the union's internal affairs. USWA seeks review of these holdings.

Statement of Facts [1]

USWA elects its officers by referendum vote of its members. There is a long history of hotly-contested elections for office within USWA, with incumbents and other

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[1] The case was decided below on cross-motions for summary judgment. The district court granted summary judgment in favor of plaintiffs (respondents here) invalidating USWA's rule, and the court of appeals affirmed. USWA submitted a number of affidavits, declarations, and documentary exhibits, explaining the history of USWA elections and of the adoption of the USWA rule in question. The Statement of Facts which follows is based upon that evidence. In virtually every respect, the facts stated herein were not disputed by plaintiffs. And given the posture of the case, all evidence placed by USWA before the district court, whether or not disputed by plaintiffs, must be assumed to be true.

"administration-supported" candidates frequently being defeated by insurgents.[2]

In 1977, USWA held its quadrennial election for its International offices. Two candidates ran for President: Edward Sadlowski, Jr., the District Director of District 31 (USWA's largest district), and Lloyd McBride, the District Director of District 34. Each headed a slate of candidates seeking the five International officer positions.[3]

The 1977 election was marked by a phenomenon that was new to USWA and indeed apparently unprecedented in the history of the AFL-CIO: the Sadlowski campaign made virtually no effort to secure campaign contributions from USWA members, but instead was financed primarily by contributions from persons who were not USWA members.[4] In contrast, in prior USWA elections, candidates—including candidates who had successfully campaigned against and defeated incumbents—

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[2] In USWA's 1965 election, the incumbent President and Vice-President of USWA both were defeated in their bids for re-election. In the next election, in 1969, the incumbent President was re-elected, but in six of the eleven contested races for District Director the incumbent or candidate supported by the President was defeated. (USWA is divided into a number of Districts or administrative units; in each District a Director is elected by the USWA members in the District. The District Directors, along with the International officers, constitute the International Executive Board.) Following the next election, in 1973, USWA's International Executive Board (which then had 28 members) included 17 who had gotten into office by defeating an incumbent or who had opposed the election of the then-incumbent top officers of USWA. In the 1977 election, three incumbent District Directors were defeated in re-election bids, and in at least two other District Director races the winning candidates were elected on platforms openly critical of USWA's top officers. Affidavit of Lynn Williams, International Secretary of USWA, December 21, 1979, ¶ 18.

[3] *Id.*, ¶ 9.

[4] *Id.*

had relied solely, or virtually so, upon contributions from USWA's 1,300,000 members.[5]

The influx of "outsider" money into the USWA election triggered a nationwide debate—featuring editorials and "op-ed" articles in major newspapers—about the propriety and desirability of outsiders attempting to influence the outcome of internal union elections.[6] Proponents of such efforts, such as Joseph L. Rauh, Jr., Sadlowski's attorney, argued that as "the decisions reached by the elected officials [of national unions] vitally affect the public interest," the public has "a sufficient interest in the outcome of union elections to warrant their participation as personal . . . contributors."[7] Editorials in the *New York Times* and *Wall Street Journal* took the opposite position, arguing that outsider efforts to influence union elections "open the way to contributors seeking to buy something other than the well-being of a union or the labor movement," and warning that "money is not usually freely given and union politicians are no more immune than others to its lure and to its claims."[8]

The propriety of candidates accepting non-member contributions became a major issue within the USWA as well. The McBride slate's platform in the 1977 cam-

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[5] The record contains declarations from five successful, insurgent candidates attesting to this fact. Declarations of Frank Lesaganich, Mitchell Mazuca, Joseph Odorcich, James Coyne, and Frank Valenta. The record also explains why campaigns can be financed by member contributions: as of 1979, the average earnings of USWA members in the five major industries which USWA represents were well over $20,000 per year. Affidavit of James Smith, Acting Head of USWA Research Departme..., December 20, 1979, ¶¶ 2-3.

[6] Williams Aff., *supra*, n.2, ¶ 9 and Exs. A-E.

[7] *Id.*, Ex. A (article by Joseph L. Rauh, Jr., "Outsiders' Assistance in Union Elections," *New York Times*, January 17, 1977).

[8] *Id.*, Ex. B (*New York Times* editorial, February 4, 1977). See also, *Id.*, Ex. C (*Wall Street Journal*, September 21, 1978).

paign included as a central tenet the view that outsider participation in USWA elections was dangerous for the union.[9] McBride defeated Sadlowski by a wide margin (57% to 43%) and the other members of the McBride slate won by comparable margins.[10]

The first USWA Constitutional Convention after the 1977 election was held in 1978. That convention was attended by 4,227 delegates elected by the members of USWA's affiliated locals to represent the local membership at the convention. Those delegates, after debating the issue of outsider contributions, decided, by a margin of approximately 10 to 1, to adopt a constitutional provision prohibiting candidates for USWA International office from accepting contributions from non-members.[11] This prohibition became Art. V § 27 of the USWA Constitution.[12]

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[9] Declaration of Lynn Williams, April 27, 1980, ¶ 4.

[10] Williams Aff., *supra*, n.2, ¶ 18. A few months after the election Sadlowski wrote that "the United Steelworkers of America is the finest, most Democratic, most honest, and responsive Union in the United States." *Id.*, Ex. H.

[11] In advance of the convention, the members of 225 USWA locals had submitted resolutions urging that such a prohibition be adopted. There were only two other constitutional proposals for which the number of resolutions even approximated those seeking the "outsiders" ban. *Id.*

[12] *Id.*, ¶¶ 4, 15-16. Article V, § 27 appears at Ex. 6, p. 238 of the Williams Affidavit and is reprinted in an appendix to the court of appeals' opinion, App. 27a-30a.

That the new rule would not inhibit candidacies by non-incumbents was evident not only from the success in the past of challengers who had not relied upon outsider contributions, see n.5, *supra*, but also from the evidence of initial fundraising under Art. V § 27 in anticipation of the 1981 USWA election (in an early campaign stage at the time the record below was made). In District 29 of the USWA—a district containing only 3% of the union's membership—a candidate for District Director who was neither an

Proceedings Below

In October, 1979, this action was filed. The five plaintiffs included two members of USWA (Sadlowski and Joseph Samagria) who contemplated becoming candidates in USWA's 1981 election and who wished to solicit and accept contributions from non-members of USWA, and three non-members of USWA who had contributed to Sadlowski's campaign in the 1977 election and who wished to contribute to candidates in future USWA elections.[13] Plaintiffs contended that Article V § 27 violated the National Labor Relations Act, the First Amendment, Title IV of the LMRDA (the title governing union elections), and § 101(a)(4) of the LMRDA (the "right to sue" provision).[14]

USWA moved to dismiss the complaint for failure to state a claim, and both sides filed motions for summary judgment.

The district court rejected all of plaintiffs' challenges except one. Notwithstanding that the neutral body ap-

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incumbent nor backed by the incumbent administration had as of February 1980, fifteen months before the election, raised in excess of $30,000 from USWA members. Affidavit of David Roop, Chairman of Committee to Elect Harry Lester, December 6, 1979; Declaration of David Roop, April 25, 1980. Projected across USWA's entire membership, this would represent contributions several times those raised by either the McBride slate or the Sadlowski slate in the whole of the 1977 election.

[13] Complaint ¶¶ 2-6, 36-37. The three were Leonard S. Rubenstein, a Washington, D.C. attorney; James Miller, a Boston attorney; and Edward Sadlowski, Sr., the father of candidate Sadlowski.

[14] In addition to suing USWA, plaintiffs also named the Secretary of Labor as a defendant on the theory that he had "sanctioned and approved" Article V, § 27 (Complaint ¶ 33). The Secretary's motion to dismiss was granted on undisputed proof that the Secretary had not done so. (App. 38a) The court of appeals affirmed this ruling (App. 26a).

pointed by USWA to administer Art. V § 27, headed by former Secretary of Labor W. Willard Wirtz, had ruled that the provision "does not extend to financial support for legal services," the district court feared that Art. V § 27 might be applied to prohibit a candidate from accepting non-member contributions to finance campaign-related litigation.[15] The district court on that basis held that Art. V § 27 violated § 101(a)(4) of the LMRDA which provides that "No labor organization shall limit the right of any member thereof to institute an action in any court." (App. 35a-36a) Although the

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[15] To administer and enforce the prohibition on accepting non-member contributions, Article V, Section 27 created a Campaign Contribution Administrative Committee ("CCAC") consisting of three persons appointed by the International Executive Board, "who shall be distinguished, impartial citizens who are not members of the International Union". Following enactment of Art. V, § 27, former Secretary of Labor Willard Wirtz was named Chairman of the CCAC. The other two persons named to the CCAC were David Lewis, for many years a member of the Canadian Parliament and federal leader of the New Democratic Party in Canada and, at the time of his appointment, Research Professor with the Institute of Canada Studies and the Department of Political Sciences at Carleton University; and Eric Springer, formerly Director of Compliance of the United States Equal Employment Opportunity Commission and Chairman of the Commission on Human Relations in Pittsburgh, Pennsylvania. Williams Aff. ¶ 17.

When the complaint was filed in this action alleging that Article V, § 27 would prohibit a candidate from raising money from non-members to finance litigation related to his candidacy, USWA's counsel requested an advisory opinion from the CCAC as to whether the Article applied to the financing of litigation. After soliciting the views of counsel for plaintiffs and USWA, the CCAC issued the ruling quoted in text. The CCAC left open the question whether Article V, § 27 would prohibit a candidate from accepting outsider contributions to finance a lawsuit which "is not a bona fide attempt to secure an adjudication of legal rights, but, rather, is motivated solely by a desire to promote a candidate's political campaign," although the CCAC did state that it "would be exceedingly reluctant about putting its own interpretation on the quality of good

district court found no legal infirmity in Art. V, § 27's core prohibition on outsider contributions for campaign (i.e., non-litigation) purposes, it enjoined enforcement of Article V, § 27 *in toto*, reasoning that the portion of the rule "which limits meaningful access to the courts . . . cannot be separated or isolated from the rule in its entirety" (App. 34a).

On appeal, the court of appeals affirmed the district court's finding that Article V, § 27 violated § 101(a)(4) of the LMRDA, but indicated that were the rule defective only insofar as it applied to contributions for litigation (as the district court had held), the sweeping injunction issued by the district court would be inappropriate.[16] However, the court of appeals also found that the ban on non-member contributions for *campaign* purposes violated § 101(a)(2) of the LMRDA, the "freedom of speech provision" of the LMRDA, a provision invoked by plaintiffs for the first time on appeal. On that basis, the court affirmed the district court's injunction against the enforcement of Article V, § 27 with respect to campaign as well as litigation contributions.[17]

The court began its analysis by announcing its approach to construing the LMRDA: to "seek out the

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or bad faith that attends an individual's asserting his or her legal rights in a court proceeding." See App. 8a.

The district court concluded that this interpretation "which purports to limit the scope of the rule as it affects litigation . . . does not cure the rule's denial of a member's right to counsel. . . ." App. 33a.

[16] "Although we believe that the entire rule must fall, it is not because or our adherence to some formalistic nonseparability rule. App. 11a.

[17] The appellate court modified the district court's injunction in one limited respect: whereas the district court had invalidated Article V, § 27 *in toto*, the court of appeals upheld the portion of that provision which authorized the USWA Executive Board to delegate to the CCAC the power to administer other USWA election rules unrelated to the ban on outsider contributions. App. 25a-26a.

underlying rationale without placing great emphasis upon close construction of the words." App. 15a. As "[o]ne of the principal purposes of the Act was 'to insure union democracy,'" it follows, said the court below, that § 101(a)(2) authorizes courts to invalidate any union rule which, in the court's view, does not comport with "union democracy." App. 15a-16a. On this basis the court below concluded that the prohibition against accepting non-member contributions deprived candidates of their right under § 101(a)(2) "to meet and assemble freely with other members; and to express any views, arguments or opinions":

> Even without contribution limitations, challengers to the union leadership face substantial barriers, especially the electoral power of the union staff. Union democracy can only occur if effective challenges can be made to the often-entrenched union leadership. Any attempt that would operate to inhibit insurgents must be carefully scrutinized. . . .
>
> In our view, the outsider rule's blanket prohibition on outside contributions for 'traditional campaign purposes,' . . . flies squarely in the face of the intent of the LMRDA to 'insure union democracy.' [App. 16a; citations omitted]

Applying similar reasoning, the court rejected USWA's argument that even if acceptance of non-member campaign contributions were an act of speech or assembly within the purview of § 101(a)(2), USWA's ban on accepting such contributions would nonetheless be protected by the proviso to § 101(a)(2) which states that "nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution." The court construed this proviso as authorizing the court to make its own judgment of the "reasonableness" of a union rule based on the court's view of whether the rule furthers "union democracy." On this basis, the court found Art. V, § 27 wanting:

> We cannot conceive of anything that would do more to inhibit union democracy than to prohibit insurgent candidates from receiving financial support from those outside sources that are not prohibited by the statute. Such a rule in our opinion is unreasonable. [App. 20a]

To buttress its analysis, the lower court drew heavily upon its understanding of First Amendment jurisprudence. The court concluded that § 101(a)(2) "place[s] essentially the same limits on labor unions with respect to outside campaign contributions that the First Amendment would if it applied to labor unions" (App. 13a; see *id.* at 17a). Since, in the court's view, "the outsider rule in many instances could unquestionably operate to prevent candidates, at least those facing the electoral power of entrenched union staffs, from 'amassing the resources necessary for effective advocacy,'" App. 17a-18a, the court found the prohibition on accepting outsider contributions inconsistent with First Amendment principles respecting candidates' rights announced in *Buckley v. Valeo*, 424 U.S. 1.[18]

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[18] The appellate court's speculation as to the effect the outsider rule could have was not based on the record of this case (or on a finding by the district court on this point since there had been no such finding). USWA submitted evidence, see nn. 5, 12, *supra*, which was undisputed, that numerous challengers had been able to mount successful campaigns for USWA office based solely on the contributions of union members. And with respect to the "entrenched union staff," USWA had submitted evidence, again undisputed, that (1) there are less than 1,500 non-clerical staff employees in the USWA (as compared to 1,300,000 members); (2) staff employee salaries are not substantially different from the incomes of USWA's members generally; (3) staff employees are members of the union with the same right to participate in USWA elections as other members; (4) staff employees enjoy contractual protection against job interference of any kind for the positions they take in USWA elections; and (5) staff employees regularly run against incumbents and support others who do. Indeed, in the 1977 election, three of the candidates for top office on the Sadlowski slate were staff employees; three other staff employees ran against and defeated

The court dismissed in a footnote USWA's claim that if, as the court had held, § 101(a)(2) prohibited USWA's members from banning outsider contributions, § 101(a)(2) would interfere with the First Amendment right of USWA members to determine who may participate in the union's internal affairs:

> The Union also contends that the recent decision of the Supreme Court in *Democratic Party v. La-Follette*, 49 U.S.L.W. 4178, supports the validity of Section 27. We disagree. . . . The decision in *Democratic Party* is inapposite here. It frees elected delegates from being required at the National Convention to vote the preference for president expressed in an election which was *not* limited to publicly recorded Democrats, but in no way restricts any candidate for delegate from receiving financial support from independents and even from members of other parties. [App. 23a-24a, n.19. Emphasis in original]

REASONS FOR GRANTING THE WRIT

At issue in this case is whether the members of labor unions have the right to decide for themselves, as USWA's membership did, whether to permit non-members to participate in the union's internal election processes.

The threshold question is one of statutory construction; did Congress in enacting § 101(a)(2) of the LMRDA take the right to make that decision away from union members. If that is § 101(a)(2)'s effect, then the case poses a second and broader question concerning the

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incumbent District Directors; and more than 20 staff employees ran unsuccessfully for District Director positions. None of these staff members suffered any adverse job consequences as a result of his electoral efforts. Affidavit of Joseph Jeneske, Director of USWA Personnel Department, December 20, 1979, ¶¶ 2-4.

constitutional right of free association. Private associations play a vital role in our society. And just last Term this Court observed that the constitutional protection afforded citizens to create and to set the rules for their associations "necessarily presupposes the freedom to identify the people who comprise the association and to limit the association to these people only." *Democratic Party v. LaFollette*, 49 U.S.L.W. 4178, 4182. The Court added: "Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being." *Id.* at 4182 n. 22.

In shaping the LMRDA, Congress acted in harmony with the basic presuppositions of the First Amendment. The legislative purpose, as this Court has observed, was to establish public law that would "keep the union leadership responsive to the membership," *Wirtz v. Hotel Employees*, 391 U.S. 492, 497. Pursuit of that end, which itself is consistent with the concept of free association, was tempered by Congress' understanding that "in establishing and enforcing statutory standards great care should be taken not to undermine union self-government." [19] Excessive regulation, Congress believed, might lead to "wrecking important institutions, violating cardinal precepts of law, and undermining the principles upon which a free society is based." [20] Thus, as this Court has recognized, Congress shaped the LMRDA "to allow unions to govern their own affairs," *Boilermakers v. Hardeman*, 401 U.S. 233, 246.

The court below nevertheless found the USWA rule prohibiting acceptance of campaign contributions from

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[19] S. Rep. No. 187, 86th Cong. 1st Sess. 7 (1959).

[20] *Id.* at 5.

non-members in elections for union office invalid under § 101(a)(2) of the LMRDA, the "freedom of speech" provision. That court read § 101(a)(2) as a grant to the federal courts of a roving commission to invalidate union rules the judiciary finds inconsistent with its notions of "union democracy." In reaching this conclusion the court of appeals ignored: that Congress in Title IV of the LMRDA regulated with particularity campaign contributions in union elections, and did so in a manner leaving to the members of each union the decision whether to permit non-member contributions; that Title I of the LMRDA, of which § 101(a)(2) is part, was not intended to authorize a second judge-made election code; that there is not a word in Title I or its legislative history indicating an intent to take from the union members their right, preserved in Title IV, to adopt their own rules on non-member campaign financing; that the holding below, granting outsiders the right to participate in internal union elections, does not serve the central purpose of the Act to "keep the union leadership responsive to the membership"; and that that holding is inconsistent with the free association principles stated in *Democratic Party*.

The result of these multiple failures in analysis is a decision at war with cherished values that lie at the heart of both the LMRDA and the First Amendment: the autonomy of private associations, and the sovereignty of these associations' members in regulating their organizations' internal affairs. For the 1,300,000 members of USWA, the decision means that, for all time, they must tolerate attempts by outsiders to secure the election of candidates for USWA office who, because beholden to these outsiders, may be diverted from acting solely in the interest of the USWA membership. And the decision below opens the entire trade union movement to a like threat. The lower court's decision thus warrants this Court's review.

I. THE STATUTORY ISSUE

A.

The LMRDA is the "first comprehensive regulation by Congress of internal union affairs," *NLRB v. Allis Chalmers Manufacturing Co.*, 388 U.S. 175, 193. Title IV is addressed specifically to union elections; it is "Title IV's special function . . . to insure 'free and democratic' elections," *Wirtz v. Bottle Blowers Ass'n*, 389 U.S. 463, 470. The legislative history of Title IV, as this Court has observed:

> shows that Congress weighed how best to legislate against revealed abuses in union elections without departing needlessly from its long-standing policy against governmental intrusion into internal union affairs. The extensive and vigorous debate over Title IV manifested a conflict over the extent to which governmental intervention in this most crucial aspect of internal union affairs was necessary. [*Id.* at 470-71][21]

In settling that debate, Congress focused specifically on the subject of campaign financing and determined that "governmental intervention . . . was necessary" in only two respects: to secure the right of union members to contribute to candidates for union office (§ 401(e)), and to prohibit employers and unions from making such contributions (§ 401(g)). Congress did not deem "governmental intervention . . . necessary" with respect to contributions by non-members other than employers, leaving the members of unions, acting through democratic processes, free to adopt their *own* rules on that subject. Congress made this freedom explicit, decreeing in § 401(e) that union elections "shall be conducted in accordance with the constitution and by laws of [the union] insofar as they are not inconsistent with the provisions of this title," and in § 403 that, except as otherwise re-

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[21] *See also Wirtz v. Hotel Employees Local 6*, 391 U.S. 492, 496; *Hodgson v. Steelworkers Local 6799*, 403 U.S. 333, 338.

quired by Title IV, "[n]o labor organization shall be required by law to conduct elections of officers . . . in a different form or manner than is required by its own constitution.[22]

Congress' leaving union members free to set their own rules concerning outside contributions reflects the "general approach" of Title IV as explained in the accompanying report of the Senate Labor and Public Welfare Committee:

> A strong independent labor movement is a vital part of American institutions. The shocking abuses revealed by recent investigation have been confined to a few unions. The overwhelming majority are honestly and democratically run. In providing remedies for existing evils, the Senate should be careful neither to undermine self-government within the labor movement nor to weaken unions in their role as the bargaining representatives of employees.[23]

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[22] See also § 402(c), which provides that should a court find a violation of Title IV which may have affected the outcome of an election, the court shall "direct the conduct of a new election under supervision of the Secretary, *and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization*" (emphasis added).

[23] The report continues:

> In acting on this bill the committee followed [these] principles:
>
> 1. The committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization. Trade unions have made a commendable effort to correct internal abuses; hence the committee believes that only essential standards should be imposed by legislation. Moreover, in establishing and enforcing statutory standards great care should be taken not to undermine union self-

Far from being one of the "evils" that prompted Congress' limited intrusion into internal union affairs, bans on non-member contributions, by assuring that officers will not be beholden to outsiders, are consistent with the overall aim of Title IV, and indeed, the entirety of the LMRDA: "to insure that [union] officials . . . are responsive to the desires of the men and women whom they represent."[24] Outsider contributions, then, was not a subject that prompted Congress to "depart . . . from its long-standing policy against governmental intrusion into internal union affairs."

B.

Title I was added to the bill that became the LMRDA on the floor of the Senate. The court below concluded that in so doing Congress intended to legislate again

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government or weaken unions in their role as collective-bargaining agents.

2. Given the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully competent to regulate union affairs. The committee strongly opposes any attempt to prescribe detailed procedures and standards for the conduct of union business. Such paternalistic regulation would weaken rather than strengthen the labor movement; it would cross over into the area of trade union licensing and destroy union independence.

S. Rep. No. 187, 86th Cong., 1st Sess., pp. 5, 7 (1959), *reprinted in* 1 National Labor Relations Board, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 at 401, 403 [hereinafter "Leg. Hist. at ——"]

[24] S. Rep., *supra*, at 20, in 1 Leg. Hist. at 416. *See also Wirtz v. Hotel Employees, supra*, 391 U.S. at 497-98 (purpose of Title IV was "through the election process, to keep the union leadership responsive to the membership").

with respect to campaign contributions, and to withdraw from unions and their members the freedom Title IV had left to decide whether to permit non-member contributions. That conclusion misreads Congress' intent.

1. By its terms, § 101(a)(2) gives no hint of a congressional intent to go beyond Title IV by extending statutory protection to non-member contributions. The section, which confers rights only on "members" of unions, sets forth with particularity the rights conferred: "to meet and assemble freely with other members," "to express any views, arguments, or opinions," and "to express at meetings of the labor organization . . . views upon candidates in an election . . . or upon any business properly before the meeting." The normal meaning of this language does not suggest a right to accept a non-member's campaign contribution; accepting such a contribution is neither "assembl[y] with other members," nor "express[ion] of views, arguments or opinion." [25]

2. Nor is there any indication in the explanations of § 101(a)(2) by its sponsors on the floor of the Senate that the section was intended to create additional rights with respect to campaign financing beyond those created in Title IV. The proponents of § 101(a)(2) were unanimous that its purpose was to protect union members from being disciplined for criticizing their leaders; no other purpose was suggested by any legislator.[26] And under the terms of § 101(a)(2) even this purpose was to be

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[25] Contrast this language with the specific words of § 401(e) granting *members* the right to make campaign contributions: "every member in good standing shall . . . have the right to . . . support the candidate or candidates of his choice, without being subject to penalty, discipline or improper interfernce or reprisal of any kind."

[26] *E.g.*, 2 Leg. Hist. at 1098, 1103, 1104 (Sen. McClellan), 1109 (Sen. Curtis), 1115 (Sen. Goldwater), 1115 (Sen. Mundt), 1116 (Sen. Dirksen).

achieved consistent with the union's "right . . . to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution."[27]

3. Title I was *not* intended to create a second code of elections to supplement, or supplant, the election code established in Title IV. Rather, Title I "was specifically designed to promote the 'full and active participation by the rank and file in the affairs of the union,'" *Hall v. Cole*, 412 U.S. 1, 7-8, both within the electoral context established by Title IV and in all other aspects of union affairs. To achieve that end, Title I sought to assure that each member is free—and feels free—to participate as he or she desires in union affairs. As Senator McClellan explained:

> Without such protection, other provisions of law may be of little benefit and meaningless. Without such protection in the exercise of his legitimate rights, the records of our committee's investigations show over and over again that a rank-and-file member dare not risk any opposition to a corrupt or autocratic leadership.[28]

Title I would, Senator McClellan argued, remove the fear of retribution as "an element of the relationship between

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[27] This proviso to § 101(a)(2) was added as part of the Kuchel "compromise bill of rights," *see* pp. 21-22, *infra*, for the purpose of "provid[ing] for the rule of reason with reasonable restraints on the right of free speech." *Id.* at 1231 (Sen. Kuchel).

[28] *Id.* at 1098. Senator McClellan made clear that it was his intent to free union members to speak their minds "not only in a union hall but outside," *id.* at 1230—for example, "to visit their neighbors and to discuss union affairs," *id.* at 1104. But it does not follow from the fact that Congress sought to free union members to discuss union affairs with their "neighbors" that Congress also sought to grant these "neighbors," i.e. non-members, the right to participate in the election of the union's officers.

union leaders and union members," and thus further the Act's overall purpose of "placing the ultimate power in the hands of the members, where it rightfully belongs, so that they may be ruled by their free consent." [29]

4. The court below interpreted § 101(a)(2) as authorizing it to invalidate any union rule which, in the court's view, is inconsistent with "union democracy." That reading of the statute is flawed in two separate respects.

First, as noted heretofore, Title IV, and not Title I, was the "special vehicle," *Wirtz v. Hotel Employees, supra*, 391 U.S. at 498, through which Congress sought to assure *electoral* democracy. Title IV imposes those standards that Congress deemed necessary to achieve that end. It distorts the statutory scheme to construe Title I, as the court below did, as an authorization for courts to elaborate at will on Congress' work.[30]

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[29] *Id.* at 1099. Senator McClellan added:

> I do not believe that unions in our society are supposed to be, or that they should be, permitted to be the masters of the members. Unions should be the servants. [*Ibid.*]

[30] *Musicians Federation v. Wittstein*, 379 U.S. 171, confirms this conclusion. In that case, this Court held that § 101(a)(3) of the LMRDA, which requires that dues increases be approved by majority vote of the delegates to a convention, permitted a union to weight the votes of delegates according to the number of members in the local each represented. In reaching this conclusion, the Court emphasized that Title IV, while containing "elaborate statutory safeguards for the election of union officers," did not prohibit weighted voting in officer elections. *Id.* at 181-82. The Court in *Wittstein* did not view Title I as a blank page on which the courts could insert whatever requirements they thought useful in furthering "union democracy"; rather the Court refused to read Title I to impose particularized requirements that are not contained in the more "elaborate" Title IV. *Cf. also Calhoon v. Harvey*, 379 U.S. 134, 138-139.

Second, even if Title I were aimed at achieving electoral democracy, it still would not have the wide-sweeping range the lower court gave it. For Title I incorporated the same limiting principle that informs Title IV: Congress' desire to correct specific evils while minimizing the extent of federal intrusion into internal union affairs.

Senator McClellan, the author of the initial draft of Title I, urged Congress to "prescrib[e] minimum standards of democratic processes and conduct for the administration of internal union affairs." [31] He defended his specific amendment on the ground that it offered "the very minimum"—"the basic things"—required to address the abuses in some unions that the special committee he chaired had uncovered.[32] And even his draft, actuated by that restraint, was unacceptable to a number of Senators who feared that it "contained provisions which would unduly harass legitimate unionism." [33] Led by Senator Kuchel, these Senators offered a "compromise bill of rights" [34] which further limited the degree of federal regulation of internal union affairs by narrowing certain sections of the McClellan draft and adding provisos to other sections to protect the right of unions "to make reasonable rules for the conduct of [their] mem-

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[31] 2 Leg. Hist. at 1098.

[32] *Id.* at 1100, 1103. Senator McClellan's Select Committee on Improper Activities in the Labor or Management Field had concluded:

> While the committee feels that the bulk of American unions operate fairly and democratically and agrees with the principle that the Federal Government should not interfere in the normal functioning, it is still of the opinion that certain basic standards of democratic procedure should be established by law. [S.Rep. No. 1417, 85th Cong. 2d Sess. 452 (1958)]

[33] 2 Leg. Hist. at 1233 (Sen. Church).

[34] *Id.* at 1294 (Sen. McClellan). Sen. McClellan voted for this "compromise" in preference to his own amendment. *Id.* at 1239.

ebrs." [35] It was this "compromise bill of rights" that was enacted into law.[36]

The United States Court of Appeals for the Tenth Circuit drew the proper lesson from this history:

> The rights granted by the Act are specific. We believe that Congress did not intend that the Act be an

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[35] *Id.* at 1236 (Sen. Allott). The Kuchel amendment—which was cosponsored by Senators Clark, Church, Javits, Cooper, Gore, Neuberger, and Aiken—was offered two days after the Senate had adopted the McClellan amendment by a vote of 47-46 and had defeated a motion to reconsider by virtue of the vote of the Vice-President breaking a tie. *Id.* at 1119.

[36] The Kuchel amendment passed the Senate by a vote of 77-14, *id.* at 1239, and was not changed in any significant respect by the House of Representatives. *See also Hall v. Cole, supra*, 412 U.S. at 7.

Further confirmation of the limited scope of Title I—and of the fact that § 101(a)(2) was not intended to require unions to permit outsider participation in union elections—is provided by congressional rejection of an amendment to Title I that would have made it unlawful for a union to "refuse membership, segregate, or expel any person on the grounds of race, religion, color, sex, or national origin." *Id.* at 1648-51. Supporters of the Landrum-Griffin bill argued successfully, in opposition to the amendment, that "[w]e do not seek in this legislation in no way, no shape, no guise to tell the labor unions of this country whom they shall admit to their union. No part of this legislation attempts to do that." *Id.* at 1649 (Rep. Landrum); *see ibid* (Rep. Griffin). It makes no sense to conclude that a Congress so sensitive to union perogatives in deciding who to admit to membership that it was not even willing to ban racial discrimination nonetheless decided, *sub silentio*, to require unions to permit persons not admitted to membership to participate in internal union elections. Yet that is precisely what the court below has held.

In subsequent labor legislation, Congress has remained solicitious of the right of labor organizations to define for themselves their membership requirements. Thus, in enacting Title VII of the Civil Rights Act of 1964, Congress specifically rejected a proposal to prohibit discrimination by unions in admitting members. 110 Cong. Rec. 2953-55.

> invitation to the courts to intervene at will in the internal affairs of unions and that 'general supervision of unions by the courts would not contribute to the betterment of unions or their members or to the cause of labor-management relations.' [*Williams v. ITU.* 423 F.2d 1295, 1297 (10th Cir. 1970), *cert. denied*, 400 U.S. 824, *quoting Gurton v. Arons*, 339 F.2d 371, 375 (2nd Cir. 1964)]

Thus the court below erred in reading § 101(a)(2) to invalidate Article V, § 27 of USWA's Constitution.[37]

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[37] The court below also relied on the First Amendment to justify its holding; the court reasoned that under the principles announced in *Buckley v. Valeo, supra*, the First Amendment would not permit the "state" to impose a comparable ban on outsider contributions. But as we have shown, the language, history and structure of the Act all demonstrate that in enacting § 101(a)(2) Congress did *not* intend to foreclose unions from prohibiting outsider contributions. Congress' intent cannot be defeated by invoking First Amendment analogies which produce results at variace with that intent. While such analogies may be helpful in the area to which § 101(a)(2) *is* applicable, *e.g.*, in deciding whether the particular expression in which a union member has engaged is entitled to protection, analogies cannot answer the threshhold question whether Congress intended § 101(a)(2) to create a right to accept contributions from non-members.

Even if it were appropriate to decide this case by analogizing § 101(a)(2) to the First Amendment, the correctness of the decision below would still be open to serious question. That decision would mean that *Congress* is precluded from enacting a law forbidding non-member contributions in union elections, even on the basis of a judgment (such as motivated USWA's members here) that such a ban is necessary to assure that union officers are beholden solely to the union's members. Further, that decision casts in doubt the constitutionality of 2 U.S.C. § 441e, which prohibits candidates for federal office soliciting or accepting contributions from foreign nationals. The interests served by that law are precisely the same as the interests USWA sought to vindicate, with respect to USWA elections, in adopting Art. V, § 27: assuring that persons *outside* the polity (foreign nationals in the case of federal elections, non-members in the case of union elections) do not influence election outcomes and that those elected are beholden

II. THE CONSTITUTIONAL ISSUE

By construing § 101(a)(2) to prohibit USWA's members from deciding, through a democratic process, to preclude non-member participation in USWA's internal elections, the lower court has raised a substantial question as to the constitutionality of the statute. Last Term, in *Democratic Party v. LaFollette*, 49 U.S.L.W. 4178 (1981), this Court held that the First Amendment protects the right of members of a private association to decide whether non-members may participate in the decision-making processes of the association. Based on that principle, the Court concluded that Wisconsin had acted unconstitutionally in requiring the Democratic Party to permit non-Democrats to participate in the Party's process for nominating its presidential candidate. The Court explained:

> [T]he National Democratic Party and its adherents enjoy a constitutionally protected right of political association. This First Amendment freedom to gather in association for the purpose of advancing shared beliefs is protected by the Fourteenth Amendment from infringements by any State. And the freedom to associate for the "common advancement of political beliefs," necessarily presupposes the freedom to identify the people who comprise the association and to limit the association to those people only.[22]

[22] "Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being." L. Tribe, American Constitutional Law 791 (1978) (Footnote omitted.) [49 U.S.L.W. at 4182 (citations omitted)]

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only to the polity, and not to "outsiders." It is far from obvious that the interests supporting a prohibition on outsider contributions are insufficiently weighty to justify whatever infringement on individual freedom such a prohibition may produce.

Under the construction of § 101(a)(2) by the court below, the statute deprives USWA members of the same right that was taken by Wisconsin from Democratic Party members: the right to "limit control over [the association's] decisions to those who share the interests and persuasions that underlie the association's being." *Democratic Party* teaches that, absent "compelling interests that justify the imposition of [congressional] will upon the [USWA membership]," 49 U.S.L.W. at 4183, this interference with the right of an association's members to govern the affairs of the association is unconstitutional.

The court below thought it unnecessary to inquire as to the existence of a compelling governmental interest, believing that here, unlike *Democratic Party*, no constitutional right was at stake. The court reasoned that in *Democratic Party* Wisconsin had required the Party to allow non-members to *vote*, whereas here (under the court's construction of § 101(a)(2)) Congress has required USWA to allow non-members only to *contribute*. But this factual difference has no analytical significance: in each case the constitutional interest is the same—the right of members of a private association to "limit control over their decisions to those who share the interests and persuasions that underlie the association's being." And in each case, the governmental intrusion is the same—taking from the private association's members the choice as to the role non-members may play in the organization's decision-making process. *Democratic Party* teaches that *whenever* government seeks to intrude in this manner, it must offer "compelling interests that justify the imposition" of its will. The decision below thus is inconsistent with *Democratic Party* in failing to recognize that the propriety of governmental dictation of non-member involvement depends upon the existence of a compelling governmental interest justifying that dictate.

Of course, *Democrativ Party* does not determine whether a "compelling interest" exists here to justify the intrusion upon USWA's internal affairs that the court below found to be mandated by § 101(a)(2). That question brings the Court face to face with issues of critical importance which were not resolved in *Democratic Party*—issues concerning the extent of the union members' right to govern their union's internal affairs and the extent of congressional power to regulate those affairs. Plainly, different governmental interests are involved in the labor context than were involved in the political context. This case thus provides an appropriate vehicle for the Court to further define the parameters of *Democratic Party* and to consider for the first time its proper application in the recurring context of federal regulation of the internal affairs of labor organizations.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 81-1138

EDWARD SADLOWSKI, JR., ET AL.

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,

Appellant

F. RAY MARSHALL, SECRETARY OF LABOR

No. 81-1174

EDWARD SADLOWSKI, JR., ET AL.,

Appellants

v.

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC, ET AL.

Appeal from the United States District Court for the District of Columbia

(D.C. Civil Action No. 79-02953)

Argued March 3, 1981

Decided March 31, 1981

Before: MACKINNON and ROBB, *Circuit Judges* and AUBREY ROBINSON *, *United States District Judge* for the District of Columbia

Opinion for the Court filed by *Circuit Judge* MACKINNON.

MACKINNON, *Circuit Judge*: The appellees, Sadlowski, Jr., et al., attack Article V, Section 27 of the Constitution of the United Steelworkers of America (Union) which prohibits a candidate for Union office from receiving any campaign contributions from persons who are not members of the Union. In the hotly contested election for International President of the United Steelworkers of America in 1977, Edward Sadlowski, Jr., the defeated candidate, received substantial financial support from nonmembers and made a very substantial run against the candidate supported by the incumbent leadership. Shortly thereafter the Union amended its Constitution in Article V, Section 27 to prohibit absolutely any outside financial contributions. Sadlowski and others then brought this action to invalidate the "outsider" rule, claiming that the rule violated their rights under the First Amendment, the National Labor Relations Act (NLRA), 29 U.S.C. §§ 151-168, and the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. §§ 401-531. On cross-motions for summary judgment the district court held the outsider rule violated rights of union members protected by the right to sue provision in the Bill of Rights for Union members included in the LMRDA, 29 U.S.C. § 401(a)(4), and declared Section 27 invalid in its entirety. The Union filed this appeal and, since the next election for international officers is scheduled for May 28, 1981, the case has been given expedited consideration. We affirm, with one minor exception, the order declaring Article V, Section 27 invalid and enjoining the Union from enforcing it.

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* Sitting by designation pursuant to 28 U.S.C. § 292(a).

I. BACKGROUND

In the 1977 election for International President of the United Steelworkers of America—which has some 1.3 million members—Edward Sadlowski, Jr., opposed Lloyd McBride in a heated campaign to succeed the retiring I. W. Abel. McBride enjoyed the support of the Union's incumbent leadership; Sadlowski was the insurgent challenger.[1] Sadlowski received substantial campaign contributions from sources outside the Union, and McBride received most of his financial support from the staff of the Union.

Sadlowski received 249,281 votes to McBride's 328,861 and the other members of his insurgent slate were also defeated. He contested the validity of the election, but the Secretary of Labor refused to initiate legal proceedings to overturn the announced result, and a legal challenge to the Secretary's refusal failed. *See Sadlowski v. Marshall*, 464 F.Supp. 858 (D.D.C.), *aff'd mem.*, No. 79-1461 (D.C. Cir. 1979), *cert. denied*, 447 U.S. 905 (1980).

The next biennial convention of the Union in 1978 enacted Article V, Section 27 (set forth as an Appendix to this opinion) as an amendment to the Union Constitution. In addition to imposing a blanket prohibition on campaign contributions by persons other than union members (with an exception for volunteered time), Section 27 empowered the International Executive Board to promulgate implementing regulations and created the Campaign Contribution Administrative Committee "to administer and enforce" the outsider rule. The rule represents the first attempt by an American labor union

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[1] Sadlowski was the Director of District 31, the Union's largest. Although he was declared the loser in the 1973 election for district director, the election was invalidated. He won the Department of Labor-supervised rerun by a substantial majority.

to so restrict financial support for candidates for union office.[2]

Sadlowski and others[3] brought suit in late 1979 to challenge the validity of the outsider rule. The Union and the Secretary of Labor were named as defendants. Plaintiffs complained that the outsider rule violated the First Amendment rights of both members and nonmembers; the National Labor Relations Act since it must be read consonant with the First Amendment; the right to sue provision of the LMRDA; and section 401(g) of the LMRDA, 29 U.S.C. § 481(g), which prohibits candidates

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[2] Note, *Restrictions on "Outsider" Participation in Union Politics*, 55 Chi.-Kent L. Rev. 769, 769 (1979).

[3] The other plaintiffs were Joseph Samargia, a potential candidate for Director of District 33; Edward Sadlowski, Sr., a retired union member who supported his son's candidacies in prior elections; Leonard S. Rubenstein, an outside contributor to Sadlowski's 1977 campaign for International President; and James Miller, a Massachusetts lawyer who had been active in the prior campaign. The district court found that Sadlowski, Jr., and Samargia "are eligible to be and may be candidates for [Union] offices which are subject to [the outsider rule]," Sadlowski v. United Steelworkers of America, No. 79-2953 slip op. at 2 (D.D.C. Jan. 30, 1981) (findings of fact and conclusions of law); App. at 53, and concluded that they "have 'standing' to challenge [the outsider rule]." *Id.* at 56.

Inasmuch as our disposition of this case requires us only to consider the impact of the ousider rule on protected rights of union members, we are concerned only with the interests of Sadlowski, Jr., and Samargia. The Union has not challenged their standing. We agree with the district court that as potential candidates (or supporters of potential candidates), they have standing to attack the facial validity of the outsider rule. Even if Sadlowski and Samargia were not ultimately candidates they would still have standing since their decision not to run may have resulted from the outsider rule's limitation on their ability to raise money. *See* Plaintiff's Reply to Defendant's Statement of Genuine Issues at 43, Plaintiff's Brief (app.).

for union office from receiving campaign contributions from employers or union funds. After various motions to dismiss and for summary judgment were filed and argued, the district court granted plaintiffs' motion for summary judgment on their right to sue claim and the Secretary's motion to dismiss the case as to him for lack of jurisdiction. Plaintiffs' remaining motions were denied and the Union's remaining counter-motions were granted. The Union and the plaintiffs have appealed those parts of the district court's order that were adverse to them.

II. ANALYSIS

A. *The Right to Sue*

The district court held the outsider rule violated section 101(a)(4) of the LMRDA, 29 U.S.C. § 411(a)(4), the so-called right to sue provision. The outsider rule attempts to accomplish its purpose of outlawing outside campaign contributions in a single sentence, which provides:

> No candidate (including a prospective candidate) for any position set forth in Article IV, Section 1,[4] and supporter of a candidate may solicit or accept financial support, or any other direct or indirect support of any kind (except an individual's own volunteered personal time) from any non-member.

The right to sue provision, found in the Bill of Rights for Union Members[5] section of the LMRDA, states:

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[4] These positions are International President, International Secretary, International Treasurer, International Vice President (Administration), International Vice President (Human Affairs), one District Director for each District, and a National Director for Canada. Union Const. art. IV, § 1.

[5] Labor's first Bill of Rights was proposed in the Hartley Bill, H.R. 3020, 80th Cong. It followed the testimony of Former Gov-

> No labor organization shall limit the right of any member thereof to institute an action in any court, or a proceeding before any administrative agency . . . or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator . . . .

29 U.S.C. § 411(a)(4).

We have no difficulty in ruling that the outsider rule on its face violates this right to sue provision. The language of the rule prohibiting candidates from receiving any financial support is all-encompassing and absolute. It prohibits the solicitation or acceptance of "financial support, or any other direct or indirect support of any kind" from a nonmember except for time volunteered by an individual. This blanket prohibition, *inter alia*, would stop a candidate from using outside money to pay for a lawyer's services, from accepting the services of a lawyer for a reduced rate, or from accepting the donated services of a lawyer if the lawyer's typist, secretary or other helper contributed to the product. One need look no further than the 1977 election for International President to see the crucial role that a lawyer's advice and other services play in an insurgent's quest for office against candidates supported by entrenched incumbents. Prior to the election Sadlowski filed several lawsuits and

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ernor Harold E. Stassen on the Labor Management Relations Bill, Legislative History Labor-Management Relations Bill 3844 (1947). Ten provisions were embodied in Section 8(b) of the Hartley Bill and were termed "the American working man's Bill of Rights." H.R. Rep. No. 245, 80th Cong., 1st Sess. 28 (1947). For discussion of said Bill of Rights in Congress, see 93 Cong. Rec. 3669 (1947). After the Hartley Bill reached the Senate some of the provisions were dropped but most were separated and placed elsewhere in the Act.

defended others. He also filed suits after the election. This background strongly indicates that restricting a member's right to sue was one of the Union's purposes in prohibiting outside financial support.

The Union claims that a construction of the outsider rule by the Campaign Contribution Administrative Committee (Administrative Committee) demonstrates the outsider rule does not affect the rights protected by section 101(a)(4). Shortly after plaintiffs filed this lawsuit the Union's lawyer requested the Administrative Committee to issue an advisory opinion concerning the impact of the outsider rule on the right to sue. The Committee cast the question before it as

> whether direct or indirect support by nonmembers to finance a lawsuit asserting candidates' legal rights in connection with elections *constitutes support for the purpose of influencing an election.*

Union's Brief at A-3 (emphasis added). The Committee concluded that the outsider rule did not prohibit contributions to finance litigation, stating:

> This limitation on candidacy support cannot be interpreted so broadly. An intention to limit one's access to the judicial system, a province which is so fundamental to the structure of government, cannot be inferred. It would have to be established by clear and convincing expressions of intent. This is not the case here.

Id. at A-4. We have difficulty accepting this formulation of the issue or this construction of the expansive prohibition stated in the outsider rule.[6] We need not determine whether this construction saves the rule, however, because the Administrative Committee later con-

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[6] The district court found that the " 'advisory' opinion conflicts with the clear language of the rule and its implementing regulations." App. at 55.

fused the matter in an attempt to explain the limits of the opinion and in responding to a supplemental question. The opinion continued,

> This opinion is, of course, confined to services which are in fact legal services customarily performed by lawyers. The Committee recognizes the possibility that any ruling which it makes in general terms and in response to a broad inquiry may be misconstrued or distorted in an attempt to rationalize political activities as "legal services." It will deal with those questions whenever they arise on a case-by-case basis.
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> The union, in its request for an advisory opinion, has asked the Committee to rule on two supplemental questions.
>
> The first is whether a different situation from that discussed above is presented "where the lawsuit is not a *bona fide* attempt to secure an adjudication of legal rights, but, rather, is motivated solely by a desire to promote a candidate's political campaign."
>
> We make no ruling on this variation of the central question. Such hypothesis goes beyond what can be responsibly covered by generalization. The Committee would be exceedingly reluctant about putting its own interpretation on the quality of good or bad faith that attends an individual's asserting his or her legal rights in a court proceeding. We will, however, look at such a case on its facts if it arises.

Id. at A-5.

The district court was greatly concerned by the question, left open by the advisory opinion, of "whether member-candidates can be disqualified or disciplined for . . . retaining counsel [with outside financial support] and bringing suit which the Committee or the union later determines was not *bona fide*." App. at 55. We are

vexed as well, but a subsequent regulation promulgated by the International Executive Board and adopted by the Union at its 1980 convention as a part of the International Union Elections Manual causes us even greater concern. The relevant provision states:

> B. Contributions for Legal and Accounting Services
>
> Section 27 does not prohibit the candidate's use of financial support or services from non-members to pay fees for legal or accounting services performed in assuring compliance with applicable election laws or in securing, defending, or clarifying legal rights of candidates. Contributions of this kind are permitted only to the extent that they are confined to these permissible objects. *Activities which are designed to extract political gain from legal proceedings are subject to the support limitations of Section 27.*

Union Motion for Partial Stay at Appendix C-4 (Feb. 5, 1981) (emphasis added).

Under this construction a candidate for union office would apparently be allowed to receive volunteered or reduced-rate legal services and to accept and solicit from nonmembers contributions to finance "legal . . . services performed in assuring compliance with applicable election laws or in securing, defending, or clarifying legal rights of candidates." This categorization may or may not include all of the legitimate legal proceedings that a candidate for office may instigate or defend. Even if it does, the candidate cannot accept or solicit campaign contributions to be expended for "[a]ctivities which are designed to extract political gain from legal proceedings." The Union suggested at oral argument that this statement restricts a candidate only from using outsider money to finance non-litigation activities that in some way refer to litigation, such as mailing a flyer announcing a victory in a lawsuit or some information learned during discovery or trial. We cannot accept this limited construction.

As we read the last sentence of the regulation, "activities" includes steps in the legal proceedings themselves, so that, for instance, if the filing of a complaint, the serving of interrogatories or the taking of a deposition is "designed to extract political gain," it would be subject to the contribution limitations. This broad limitation on the right to sue subsumes whatever limit resulted from the Administrative Committee's hedging on the question whether a lawsuit "motivated solely by a desire to promote a candidate's political campaign," which is "not a *bona fide* attempt to secure an adjudication of legal rights," would be subject to the contribution restrictions. Under the regulation a candidate could not receive outside assistance to finance a lawsuit even if brought in good faith and not motivated solely by a desire to advance his campaign if it was designed to extract political gain. One would go a far distance to find *any* lawsuit brought during the heat of a campaign that was not designed to extract political gain. The regulation places a severe limitation on the right to sue. The right to sue guaranteed union members by the Bill of Rights of LMRDA is a grant of an absolute right which cannot be diminished by only permitting those suits that a union might find to be *bona fide* or not designed to extract political benefit.

The outsider rule in Section 27 on its face clearly violates the rights of union members protected by the right to sue guarantee of the LMRDA. The Union's attempts to construe the rule against its plain meaning have been unpersuasive. We now turn to what is perhaps the core issue in this case—the proper scope of the remedy for the violation of the right to sue.

B. *The Appropriate Remedy*

The Union argues that if we find, as we have, that the outsider rule violates the right to sue, then "[a]t most, plaintiffs would be entitled to an injunction prohibiting

application or enforcement of that provision to interfere with the solicitation or acceptance of contributions from nonmembers to finance litigation." Union's Brief at 40. The Union has suggested the form of an injunction that it believes would prevent the outside rule from infringing on the rights protected by 101(a)(4).[7] Much of the parties' arguments on the proper scope of the remedy have focused on whether or not we can "separate" the application of the outsider rule that violates the right to sue from the remaining applications of the rule. Although we believe that the entire rule must fall, it is not because of our adherence to some formalistic nonseparability rule. Instead, we believe the remaining applications of that rule must fall because they violate the freedom of speech provision as guaranteed by section 101(a)(2) of the Bill of Rights of the LMRDA, 29 U.S.C. § 411(a)(2).

The Union contends that plaintiffs cannot now rely on section 101(a)(2) because they did not raise it in the district court. The general rule is that an appellate court does not consider issues not raised in the trial court. *E.g.*, *Miller v. Avirom*, 384 F.2d 319 (D.C. Cir. 1967). This general rule, however, is not absolute—the Supreme Court has stated that "[t]he matter of what questions may be taken up and resolved for the first time on appeal is one left primarily to the discretion

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[7] The suggested injunction provides:

> United Steelworkers of America, AFL-CIO-CLC, its officers, agents, representatives, attorneys and anyone acting in concert with them, are hereby enjoined from applying or enforcing Article V, Section 27 of the Constitution of United Steelworkers of America, AFL-CIO-CLC, to interfere with the solicitation, acceptance, or use by any member of any nonmember contributions to finance the costs, legal fees, or other expenses of instituting, maintaining, or appearing as a witness in, an action in any court or before any administrative agency.

Union's Brief at 44 n.20.

of the courts of appeals, to be exercised on the facts of individual cases." *Singleton v. Wulff*, 428 U.S. 106, 121 (1976). *See Hormel v. Helvering*, 312 U.S. 552, 557 (1947). An example of this discretion is incorporated in the widely acknowledged rule that

> "[a]n appellate court has discretion to uphold a summary judgment under a legal theory different from that applied by the trial court, and rest the affirmance 'on any ground that finds support in the record'. . . ."

Winter v. Local 639, International Brotherhood of Teamsters, 569 F.2d 146, 151 (D.C. Cir. 1977) (quoting *United States v. General Motors Corp.*, 518 F.2d 420, 441 (D.C. Cir. 1975)). *Accord, e.g.*, C. Wright & A. Miller, 10 Federal Practice and Procedure § 2716, at 440 (1973).

Typically when summary judgments are upheld on grounds different from those relied on by the district court, the other grounds were urged at trial. We must decide whether a different rule should apply in this case when the alternate ground was not explicitly urged before the trial court in the context that it is now presented. *Cf. Merriam v. McConnell*, 175 N.E.2d 293, 295 (Ill. App. 1961) (decree of dismissal can be sustained "by any argument and upon any basis, appearing in the record, which shows that the decree is right, even if [the party in whose favor the dismissal was granted] had not previously advanced such argument").

We believe that it is appropriate to now consider the impact of section 101(a)(2). The issue arising thereunder was argued in the briefs submitted to this court and the essential features of the contention were pleaded in connection with the two causes of action which charged violations of the free speech guarantees of the First Amendment. Our concern with now ruling on the effect of section 101(a)(2) revolves around the possibility that the Union might have been prejudiced by plaintiffs' fail-

ure to raise the issue in the trial court in this precise context. The only way we perceive the Union could possibly be prejudiced is that it might have constructed a different record for the purposes of summary judgment if a denial of free speech under section 101(a)(2) had been alleged in plaintiffs' complaint in addition to the denial of free speech under the First Amendment. The issue of the denial of free speech under section 101(a)(2) was implicit in the question whether plaintiffs had been denied free speech under the First Amendment, as alleged in their complaint. In other words the same argument with respect to the denial of free speech under the First Amendment would have been relevant to an allegation of denial under section 101(a)(2); and the opportunity to make such an argument was open to the Union.

Since we construe section 101(a)(2) in this case to place essentially the same limits on labor unions with respect to outside campaign contributions that the First Amendment would if it applied to labor unions, we conclude the Union had ample opportunity to meet the substance of the 101(a)(2) claim.

C. *Freedom of Speech and Association*

The free speech and assembly provision of Labor's Bill of Rights states:

> Every member of any labor organization shall have the right to meet and assemble freely with other members; and *to express any views, arguments, or opinions* . . . .

29 U.S.C. § 411(a)(2) (emphasis added).[8]

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[8] 29 U.S.C. § 411(a)(2) in its entirety provides:

> *Freedom of speech and assembly.*—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments or opinions; and to express at meetings of the labor

This portion of the LMRDA is patterned after the essential features of the First Amendment. *Ostrowski v. Utility Workers Local 1-2*, 104 L.R.R.M. 2343, 2350 (S.D.N.Y. 1980), which provides: "Congress shall make no law . . . abridging the freedom of speech . . . or the right of people peaceably to assemble . . . ." U.S. Const. amend. I.[9] The LMRDA guarantee of freedom of expression is not confined to the exercise of that right among union members. *Ostrowski v. Utility Workers Local 1-2*, 104 L.R.R.M. 2343, 2350 (S.D.N.Y. 1980); *Graham v. Soloner*, 220 F. Supp. 711, 714 (E.D. Pa. 1963). The provision recognizes the right of union members

> to assemble in groups, if they like, and to *visit their neighbors* and to discuss union affairs, and to say what they think, or perhaps discuss what should be done to straighten out union affairs, or perhaps *discuss the promotion of a union movement, or perhaps a policy in which they believe* . . . .

105 Cong. Rec. 6477 (1959) (remarks of Sen. McClellan) (emphasis added), *quoted in Ostrowski v. Utility Workers Local 1-2*, 104 L.R.R.M. 2343, 2350 (S.D.N.Y. 1980). The right of *free association* is an inseparable aspect of freedom of speech. *NAACP v. Alabama*, ex rel., *Patterson*, 357 U.S. 449, 460 (1958); *Ostrowski v. Utility*

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organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

[9] The other great right protected by the First Amendment, the right to petition for a redress of grievances, is also guaranteed to union members by 29 U.S.C. § 411(a)(4).

Workers Local 1-2, 104 L.R.R.M. at 2351. As the Supreme Court stated in *Griswold v. Connecticut*, 381 U.S. 479, 483 (1965):

> The right of "association" . . . is more than the right to attend a meeting; it includes the right to express one's attitudes or philosophies by membership in a group or by affiliation with it or by other lawful means. *Association in that context is a form of expression of opinion;* and while it is not expressly included in the First Amendment its existence is necessary in making the express guarantees fully meaningful. [Emphasis added].

Our analysis of section 101(a)(2) is guided by a recommendation made by Professor Cox shortly after the passage of the LMRDA:

> The legislation contains more than its share of problems for judicial interpretation because much of the bill was written on the floor of the Senate or House of Representatives and because many sections contain calculated ambiguities or political compromises essential to secure a majority. Consequently, in resolving them the courts would be well advised to seek out the underlying rationale without placing great emphasis upon close construction of the words.

Cox, *Internal Affairs of Labor Unions under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 852 (1960), *quoted in Wirtz v. Local 153, Glass Bottle Blowers Association*, 389 U.S. 463, 468 n.6 (1968); and *Usery v. Local 639, International Brotherhood of Teamsters*, 543 F.2d 369, 387 n.50 (D.C. Cir. 1976), *cert denied*, 429 U.S. 1123 (1977).

One of the principal purposes of the Act was "to insure union democracy."[10] The interim report of the Select

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[10] S. Rep. No. 187, 86th Cong., 1st Sess. 2 (1959); H.R. Rep. No. 741, 86th Cong., 1st Sess. 2 (1959).

Committee on Improper Activities in the Labor or Management Field, which preceded the LMRDA, in its legislative recommendations stated:

> While the committee feels that the bulk of American unions operate fairly and *democratically* and agrees with the principle that the Federal Government should not interfere in their normal functioning, it is still of the opinion that certain basic standards of democratic procedure should be established by law.

Interim Report of the Select Committee on Improper Activities in the Labor or Management Field, S. Rep. No. 1417, 85th Cong., 2d Sess. 452 (1958) (emphasis added) (hereinafter Select Committee Report).

Even without contribution limitations, challengers to the union leadership face substantial barriers, especially the electoral power of the union staff. Union democracy can only occur if effective challenges can be made to the often-entrenched union leadership. Any attempt that would operate to inhibit insurgents must be carefully scrutinized. *See Retail Clerks Local 648 v. Retail Clerks International Association*, 299 F. Supp. 1012, 1020 (D.D.C. 1969) ("Where a union policy and practice is promulgated in order, among other things, to place obstacles in the way of effective union democracy and appears to have this effect, . . . the Court cannot give that policy any recognition as it offends both equity and the provisions of the LMRDA.")

In our view the outsider rule's blanket prohibition on outside contributions for "traditional campaign purposes," Union's Brief at 41, violates the rights of the candidate and his supporters to free speech and association as guaranteed by section 101(a)(2) and flies squarely in the face of the intent of the LMRDA to "insure union democracy." We find support for this conclusion in the analogous context of contribution limitations in federal elections.

In *Buckley v. Valeo*, 424 U.S 1 (1976), the Supreme Court ruled on the constitutionality of, *inter alia*, the expenditure and contribution limitations of the Federal Election Campaign Act of 1971, 86 Stat. 3, as amended. The Court recognized the significant connection between money and political speech:

> A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached.

424 U.S. at 19. With respect to contributions the court stated:

> Given the important role of contributions in financing political campaigns, contribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy.

Id. at 21. Finding "no indication . . . that the contribution limitations imposed by the Act would have any dramatic adverse effect on funding of campaigns and political associations," *id.*, the Court upheld a limitation of $1,000 on the amount an individual could contribute to a particular candidate in an election.

In our view, the freedom of speech guarantee in the LMRDA serves to limit labor unions much as the First Amendment limits Congress in the restrictions that can validly be placed on campaign finance, but the Bill of Rights guarantees of the LMRDA are not limited to situations involving "state action." Accepting *Buckley* as persuasive authority and finding meaningful direction from the legislative history of the LMRDA, we conclude that the outsider rule in many instances could unquestionably operate to prevent candidates, at least those facing the

electoral power of entrenched union staffs, from "amassing the resources necessary for effective advocacy."

The rule permits no outside campaign contributions whatsoever. A candidate for union office cannot receive or solicit contributions from friends, relatives, Union members not in good standing, retired Union members, or well-wishers. The Union restrictions would not permit a candidate to receive a loan from his nonmember father, or a close friend, even if the loan were fully secured and carried a reasonable rate of interest. The implementing regulations contain expansive definitions of "financial support" [11] and "indirect support." [12] They also state:

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[11] "Financial Support" means a direct or indirect contribution where the purpose, object or foreseeable effect of the support to influence the election of a candidate. Financial support includes, but is not limited to:

1. Contributions of money, securities, or any material thing of value;

2. Payments to or subscription for fund raising events of any kind (e.g., raffles, dinners, beer or cocktail parties and so forth);

3. Discounts in the price or cost of goods or services, except to the extent that commercially established discounts are generally available to the customers of the supplier;

4. Extensions of credit, loans, and other similar forms of finance, except when obtained in the regular course of business of a commercial lending institution and on such terms and conditions as are regularly required by such institutions; and

5. The payment for the personal services of another person, or for the use of building or office space, equipment or supplies, or advertisements through the media.

Union Motion for Partial Stay at Appendix C-2 (Feb. 5, 1981).

[12] Indirect Support

Section 27 prohibits the solicitation and acceptance of indirect as well as direct campaign contributions from non-members. Examples of indirect support from non-members would include, the contribution of cash to a member who in

> [W]hen prohibited support is contributed, there will be a presumption that it was accepted by the candidate or his or her supporters, unless they have taken affirmative steps in good faith to dissuade the nonmember from providing such support and have taken action to correct the effects of the prohibited support.[13]

The candidate who solicits outside support or who is unable to rebut the presumption that he has accepted support that has been contributed faces serious penalties. The Administrative Committee may "declare such candidate *disqualified*." Union Const. art. V, § 27(d) (emphasis added). In addition the Union Constitution contains a general "Discipline" provision (Article XII), which makes a violation of any provisions of the Constitution punishable by *fine*, *suspension*, or *expulsion*.

Even if we assume that the Union's only purpose in passing the outsider rule was to keep undesirable outside influence out of internal union affairs, we could not accept the broad limitations placed on a candidate's ability

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> turn makes a contribution to a candidate: the donation of travel expenses, printing services, office supplies, office space, or of clerical, secretarial, or professional services used by a non-member in conjunction with his or her own volunteered service to a candidate; the distribution of election materials with the aid of a volunteer's paid staff; and the procuring of discounts.

Union Motion for Partial Stay at Appendix C-3 (Feb. 5, 1981).

[13] The regulation continues:

> In such cases where prohibited support has been contributed, it is the candidate's obligation to contact immediately the nonmember contributor, reject the prohibited support, return the contribution, insist that such support be discontinued, and take whatever action on his or her own, or as directed by the Committee, may be necessary to eliminate any impact on the election. Full reports must be made to the Committee promptly.

Union Motion for Partial Stay at Appendix C-3, 4 (Feb. 5, 1981).

to receive outside campaign contributions that are *not* prohibited by the statute.[14] The Union no doubt has a legitimate interest in protecting its internal affairs from nefarious influences. But that interest cannot justify a rule that prohibits a candidate, particularly an insurgent candidate, for union office from receiving *any* contributions or loans (except from institutional lenders) from nonmembers.

The Union suggests that Section 27 might be held valid under the proviso in 101(a)(2) which authorizes "reasonable" rules to protect unions as institutions. One of the prime purposes of Congress in enacting the Labor-Management Reporting and Disclosure Act was to "insure union democracy."[15] The issue is thus framed as to whether an absolute prohibition on outside contributions is a "reasonable" protection of a union as an institution or a feature that would operate to deny "union democracy." We cannot conceive of anything that would do more to inhibit union democracy than to prohibit insurgent candidates from receiving financial support from those outside sources that are not prohibited by the statute. Such a rule in our opinion is unreasonable. Friends, relatives, spouses, Steelworkers who are not in good standing in the Union, and well wishers in the public could not make any contribution, or even a well-secured loan at reasonable interest rates to support any such candidate.

We therefore conclude that the complete prohibition on outside financial support as declared in Section 27 is not on its face a "reasonable" rule governing the union member's responsibility to the union. There is thus no reason to deviate from the general rule against upholding a statute in part where the remainder trespasses on

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[14] *See* note 17 and accompanying text, *infra*.

[15] *See* note 10 and accompanying text, *supra*.

free speech rights. *Thornhill v. Alabama*, 310 U.S. 88, 97-98 (1940).[16]

Our view that the free speech guarantee of the Bill of Rights in the LMRDA prohibits a complete prohibition on outside financial contributions to Union candidates gains support from the intent implicit in section 401(g) of the LMRDA, 29 U.S.C. § 481(g), and the legislative history of that provision. Congress dealt in a comprehensive manner with the subject of financial support, including outside support, of candidates in Union elections in 29 U.S.C. § 481(g).[17] Following such consideration Congress limited its restrictions on financial support to prohibiting any candidate from using moneys collected as union "dues, assessment, or similar [levies]" and to providing that "no moneys of an employer shall be contributed or applied to promote" any candidate.

Prior to the enactment of the LMRDA in 1959 the Select Senate Committee ferreted out widespread corruption, dictatorship and racketeering in a number of large international unions. The Committee found that the President of the Bakery and Confectionery Workers' International Union of America had "railroaded through changes in the union constitution which destroyed any vestigial pretenses of union democracy." Select Committee Report, *supra*, at 129. It reported that Dave

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[16] It has also been suggested that Section 27 constitutes an unreasonable qualification on union candidacy in violation of 29 U.S.C. § 481(e). 55 Chi.-Kent L. Rev. 769, 790-91 (1979).

[17] 29 U.S.C. § 481(g) provides:

> No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this subchapter [29 U.S.C. §§ 481-483]. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.

Beck, General President of the International Brotherhood of Teamsters "shamefully enriched himself at [the] expense [of the union members] and that in the final instance he capitulated to the forces within the union who promoted the interests of racketeers and hoodlums." *Id.* at 84. The Committee likewise found Teamster officials joining with others to take over illegal gambling operations with an "underworld combine," *id.* at 38-39, and the top officers of the United Textile Workers of America avariciously misappropriating union funds, *id.* at 159. "Democracy [was] virtually nonexistent" in the International Union of Operating Engineers because the union was ruthlessly dominated through "violence, intimidation and other dictatorial practices." *Id.* at 437. Practices in the Teamsters "advanced the cause of union dictatorship." *Id.* at 444. The Committee cited other similar instances of widespread abuses in its 462-page Report.[18]

With such highly objectionable conditions disclosed in the hearings of the Select Committee preceding enactment of the Labor-Management Reporting and Disclosure Act of 1959, it is likely that when Congress outlawed only union and employer campaign contributions, it intended to permit candidates for union office to obtain other outside financial support from legitimate sources. Obtaining some outside support would be a practical necessity in many cases if members were to have any realistic opportunity to oust such corrupt and dictatorial incumbents as the Select Committee found in some of the unions it examined.

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[18] Current newspaper stories report the possibility that some of the same conditions still continue. A March 12, 1981 United Press International news story reports "Mob Said to Control 4 National Unions." The news story relied upon a confidential Justice Department Report and referred to the Teamsters, Laborers, Longshoremen and the Hotel, Restaurant and Bartenders International Unions.

Walter Reuther and James Hoffa have recognized that the *public* has a right to be concerned about unions. Reuther said:

> [I]n our rapidly changing and more closely interrelated and interdependent economic and political society, labor cannot be an island unto itself.

Reuther, *Labor Leadership—A Public Service*, in E. Bakke, C. Kerr & C. Anrod, Unions, Management and the Public 128 (2d ed. 1960).

And Hoffa testified before the Select Committee:

> I recognize my responsibility to the general public. I think my record speaks for itself * * *. I believe that the more power there is concentrated into a labor organization, the more responsible and careful the unions must be not to lose the complete power of having the right to have a union.

Select Committee Report, *supra*, at 249.

While it might be argued from the above Legislative history that Congress may not have intended to completely preempt the field by its provision prohibiting only the use of union and employer money, it is highly unreasonable to expect that Congress intended to leave the door open for as absolute a prohibition as is embodied in Section 27. Such construction would leave union members practically at the mercy of every entrenched group of incumbents.[19]

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[19] The Union also contends that the recent decision of the Supreme Court in Democratic Party v. LaFollette, 49 U.S.L.W. 4178 (Feb. 25, 1981), supports the validity of Section 27. We disagree. That decision upheld a rule of the Democratic Party that only voters who publicly recorded their preference for the Democratic Party could vote in the selection process for delegates to the national convention, against a Wisconsin law that permitted *any* voter to vote in a state election which purported to bind delegates to the Democratic National Convention in their votes on presidential candidates. The decision in *Democratic Party* is inapposite here. It frees elected delegates from being required at the National

III. Conclusion

Having found that the critical sentence in Section 27 not only violates 101(a)(4), but also in prohibiting outside contributions for traditional campaign purposes unreasonably impinges on the right of free speech and association guaranteed by section 101(a)(2), we must find that the outsider rule as set forth in the first sentence of Section 27 is invalid in its entirety.[20]

Convention to vote the preference for president expressed in an election which was *not* limited to publicly recorded Democrats, but in no way restricts any candidate for delegate from receiving financial support from independents and even from members of other parties.

[20] Our authority to invalidate part of the Union Constitution comes from section 401(b) of the LMRDA, 29 U.S.C. § 411(b), which provides:

> Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect.

We also note that plaintiffs were not required to exhaust an available administrative remedy. The Union has not raised that point, and as explained by the court in *Ostrowski v. Utility Workers, Local 1-2*, 104 L.R.R.M. 2343, 2345-46 (S.D.N.Y. 1980):

> Section 411(a)(4) [of Title 29 U.S.C.] provides that a union member "may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) with [his union], before instituting legal or administrative proceedings." The limitations of Section 411(a)(4) are permissive; thus, whether or not a plaintiff will be required to utilize his internal union appeals is a matter within the discretion of the trial judge. [citing cases].
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> It is well-established that "a free speech violation generally justifies dispensing with administrative remedies." *Keeffe Bros. v. Teamsters Local Union No. 592*, [562 F.2d 298, 303 (4th Cir. 1977)].

In addition, "beneficial and fair requirements of administrative exhaustion should not be imposed absent realistic possibility of a meaningful remedy." *Alexander v. Yale University*, 459 F. Supp. 1, 6 (D. Conn. 1977). It is evident from these rules that plaintiffs were under no obligation to exhaust any remedy within the Union.

The question remains whether any of the other provisions of Section 27 can survive. We conclude that they cannot with one exception. The remaining provisions of Section 27, except one, all provide in some manner for the enforcement of the prohibitions on candidates receiving any outside financial support [21] as prohibited by the first sentence of Section 27, and since we find such sentence to be invalid there is nothing left to enforce. We thus rule that the Administrative Committee shall not retain any of the power or authority derived from Section 27, with the one noted exception. Section 27(f)

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[21] The remaining provisions of Article V, Section 27 may be summarized as follows:

(1) The International Executive Board was empowered to adopt regulations for the Union's Election Manual to implement the prohibitory provision of the first sentence and require reporting not more frequently than weekly by candidates and their supporters, to insure compliance with said Section.

(2) A Campaign Contribution Administrative Committee composed of three persons who are not members of the Union was created to administer and enforce Section 27. Such Committee was authorized (a) to promote compliance with the "prohibited support provision" [of Section 27]; (b) to issue cease and desist orders directing any candidate or supporter to cure any violation of Section 27; (c) to require candidates and supporters to report such information as the Committee "deems appropriate" and to review such information; (d) to declare a "candidate disqualified" for a violation of Section 27 by the "candidate, or a supporter of a candidate"; (e) to institute "legal proceedings" that it determines "in its sole discretion . . . are necessary for the enforcement of Section 27"; (f) to recommend amendments to the regulations to the International Board and to have "such other powers as the International Executive Board determines are necessary for the implementation of . . . Section 27"; and (g) to make decisions with respect to the administration of Section 27 that "shall be final and binding, and not subject to review by any tribunal within the Union."

See the Appendix to this opinion for the complete text of Section 27.

provides: "if the International Executive Board deems it advisable" said Board may determine that the Committee "may have such other powers as the . . . Board determines are necessary for the implementation of . . . any *other* Section [Section 27 excluded] of Article V." Union Const. art. V, § 27(f) (emphasis added). Since this case does not involve any *other* section of the Constitution, if the International Board considers it necessary to exercise this authority in connection with some *other* section of the Constitution, this opinion does not prohibit such action. However, such *other* powers could not be used in any way to implement any of the prohibitions attempted by Section 27.

We agree with the district court in its judgment that the outsider rule violates the right to sue provision of the LMRDA. Our belief that the rule seriously impinges on the rights of free speech and association protected by section 101(a)(2) of the LMRDA leads us to agree with the district court that the *entire* rule must fall.[22] We therefore affirm the judgment of the district court enjoining the Union from implementing or enforcing Article V, Section 27 of the United Steelworkers of America Constitution in its entirety, with the aforesaid exception, and requiring the Union to publish notice in *Steel Labor*.

We also affirm the dismissal of the Secretary of Labor from the case for lack of jurisdiction.

Because of the nearness of the upcoming election the clerk of court is hereby ordered to issue the mandate forthwith.

Judgment accordingly.

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[22] It is thus unnecessary to decide whether there was sufficient "state action" to raise First Amendment questions. The section 101(a)(2) guarantee of free speech does not require "state action."

Appendix

Article V, Section 27 of the United Steelworkers of America, adopted September 21, 1978, provides:

> Sec. 27. No candidate (including a prospective candidate) for any position set forth in Article IV, Section 1, and supporter of a candidate may solicit or accept financial support, or any other direct or indirect support of any kind (except an individual's own volunteered personal time) from any non-member. For purposes of this Section, the term non-member means any person who is either not eligible for membership under Article III or not in good standing or any foundation, corporation or other entity whose funds are derived in whole or in part from any person not eligible for membership under Article III or not in good standing.
>
> The International Executive Board shall adopt regulations, for incorporation into the International Union Elections Manual, as necessary to implement this provision and to assure conformity with the obligations prescribed in this Section. Such regulations shall include requirements for reporting by candidates and their supporters of information pertinent to administration of and compliance with this Section, with such frequency, not to exceed weekly, as the International Executive Board deems appropriate.
>
> There is hereby created a Campaign Contribution Administrative Committee to administer and enforce this Section. This Committee shall consist of three persons, appointed by the International Executive Board, for a term to begin not later than May 1, 1979, and end on August 1, 1983, who shall be distinguished, impartial citizens who are not members of the International Union. If a Committee member

dies or resigns, the International Executive Board shall appoint a replacement. A quorum shall consist of two members of the Committee. The International President shall fix the compensation and expenses of the Committee members, and shall arrange for the provision of supplies, services, and all other assistance required by the Committee. The Committee shall have the following powers:

(a) The Committee shall have the authority to contact any and all non-members who it feels may be providing, or attempting to provide, prohibited support to any candidate, and attempt by persuasion to convince such non-members to refrain from providing such support.

(b) The Committee shall have the power (i) to direct any candidate, or any supporter, to cease and desist from any course of conduct which the Committee believes breaches this Section or the regulations of the International Executive Board adopted pursuant to this Section, and (ii) to direct any candidate, supporter or non-member to take such corrective action as the Committee deems appropriate to cure the effects of any violation and/or assure that any improper conduct will not have an effect upon the election.

(c) The Committee shall receive and promptly review the information candidates and their supporters are required to file by the regulations of the International Executive Board and by such additional requirements as the Committee may establish. The Committee may require candidates and their supporters to report whatever additional information the Committee deems appropriate to perform its functions.

(d) In the event that a candidate, or a supporter of a candidate with that candidate's knowledge or

acquiescence, willfully and substantially breaches the obligations prescribed in this Section, or the regulations adopted by the International Executive Board pursuant to this Section, the Committee shall, upon notice and hearing under such expedited conditions as the Committee deems appropriate in the circumstances, have the power to declare such candidate disqualified, and to so notify the International Tellers.

(e) If the Committee in its sole discretion determines that legal proceedings are necessary for the enforcement of this Section 27, it may institute whatever legal proceedings it deems appropriate, in the name of the International Union. The Committee shall be the only party authorized to institute legal proceedings to enforce the provisions of this Section 27.

(f) The Committee may recommend to the International Executive Board that additions or amendments be made to the regulations adopted by the International Executive Board pursuant to this Section and shall have such other powers as the International Executive Board determines are necessary for the implementation of this Section or, if the International Executive Board deems it advisable, any other Section of Article V.

Any member who believes that another member is violating these provisions may file a complaint with the Committee. The Committee shall process that complaint in such manner as it deems appropriate, and may adopt rules with respect to the filing and processing of member complaints.

With respect to the administration of this Section 27, decisions of the Committee shall be final and binding, and not subject to review by any tribunal within the Union.

At the 1980 Biennial Convention of the Union the four lines immediately above were stricken and the following new matter was inserted in lieu thereof.

> With respect to any pre-election matters within its jurisdiction, decisions of the Committee shall be final and binding, and not subject to review by any tribunal within the Union.
>
> The Campaign Contribution Administrative Committee shall have exclusive jurisdiction of all post-election contests to all or part of the election based upon the following grounds:
>
> (1) Alleged violations of this Section 27;
>
> (2) Alleged violations of any rules or regulations adopted pursuant to this Section 27; or
>
> (3) Alleged violations of the prohibition (contained in the International Union Elections Manual adopted pursuant to Article V, Section 4) against the use of union or employer funds or facilities for campaign purposes.
>
> A candidate who wishes to file a contest on any of the above grounds must, in order to perfect such contest, file the contest with the Campaign Contribution Administrative Committee within such time period and pursuant to such rules as the Committee shall establish. The Committee shall investigate such contests, make determinations on those contests and make a report of its determinations and recommendations to the International Executive Board in time to be considered by the International Executive Board prior to September 1 of the election year.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C. A. No. 79-2953

EDWARD SADLOWSKI, JR., *et al.*,
Plaintiffs,
v.
UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
and
F. RAY MARSHALL,
Defendants.

Filed Jan. 30, 1981

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court makes the following Findings of Fact and Conclusions of Law based upon the undisputed facts:

Findings of Fact

1. Plaintiffs Sadlowski, Jr. and Samargia are members of the United Steelworkers of America ("USWA") and are eligible to be and may be candidates for USWA offices which are subject to Article V, Section 27 of the USWA Constitution. The next election is scheduled to be held on May 28, 1981.

2. The defendants in this action are the United Steelworkers of America and F. Ray Marshall, Secretary of Labor.

3. In 1973, Sadlowski, Jr. was a candidate for the Director of the USWA's largest District, but the Union ruled that his election opponent who had been supported by the Union leadership was the winner. Represented

by Joseph L. Rauh, Jr., Sadlowski requested the Secretary of Labor to institute suit to invalidate the election, in which he intervened, which suit was later settled by entry of a consent order. Sadlowski won the Labor Department supervised re-run election by a substantial margin, and in 1976 and 1977, he headed a slate of candidates in a contested election for the USWA's International offices. Sadlowski and his running mates were again represented by Mr. Rauh, among others, who instituted on their behalf several legal actions and complaints to the Department of Labor. The election efforts of Sadlowski and his slate in 1977 were unsuccessful, but he received nearly a quarter-million votes from the Union's membership.

4. Following the 1973 and 1977 elections, the USWA, acting through the officers who opposed the Sadlowski slate and their staff, developed a rule which would prohibit USWA members who were candidates for high union office from soliciting or receiving contributions or assistance from non-members to finance their election campaigns or election-related litigation.

5. At the next USWA Convention, the rule barring "outsider" contributions and assistance and the implementing regulations were adopted which forbid member candidates, on pain of disqualification and disciplinary action, from receiving anything from non-USWA members, including lawyers, except a non-member's volunteered personal time. The rule in the Constitution (Article V, Section 27) provides in relevant part, as follows:

> "No candidate (including a prospective candidate) for any position set forth in Article IV, Section 1, and supporter of a candidate may solicit or accept financial support, or any other direct or indirect support of any kind (except an individual's own volunteered personal time) from any non-member. For purposes of this Section, the term non-member

means any person who is either not eligible for membership under Article III or not in good standing or any foundation, corporation or other entity whose funds are derived in whole or in part from any person not eligible for membership under Article III or not in good standing."

6. The rule and its regulations prohibit candidates from receiving monies and contributions from, among others, their spouses, relatives, friends, as well as anyone else who is not a USWA member.

7. At the time this action was commenced, on October 31, 1971, the members of the Campaign Contribution Administrative Committee ("Committee") which was to be formed to administer this rule, had not been formally or publicly announced. When it was formed, the Committee did not have the authority or power to invalidate the rule. The only union remedy plaintiffs had was to seek a change in the Constitution with regard to Article V, Section 27, before the next USWA Convention which was not scheduled to be held until approximately ten months after this suit was initiated.

8. After this action was filed, the USWA's lawyers sought and obtained an "advisory" ruling from the Campaign Contribution Administrative Committee which purports to limit the scope of the rule as it affects litigation by member-candidates. While USWA counsel place heavy reliance upon this advisory opinion, the Court finds that it does not cure the rule's denial of a member's right to counsel, to funds to support litigation or administrative proceedings and access to judicial and administrative bodies. Further, said Committee can change or amend its ruling at any time. The "advisory" opinion conflicts with the clear language of the rule and its implementing regulations; it could result in confusion and violation of its terms by unschooled members who are required to comply with it; and, equally important, the Committee

ruling leaves in doubt whether member-candidates can be disqualified or disciplined for accepting funds, retaining counsel and bringing suit which the Committee or the union later determine was not *bona fide*.

9. That portion of this broadly-worded rule which limits meaningful access to the courts and administrative bodies cannot be separated or isolated from the rule in its entirety. Election challenges and the access to counsel, the courts and the Labor Department to pursue these matters are an integral and a most important part of the union election process.

Conclusions of Law

1. This Court has jurisdiction of Count IV of the Complaint by virtue of Section 102 of the Labor-Management Reporting and Disclosure Act (29 U.S.C. 412) and 28 U.S.C. 1331, 1337 and 2201 and 2202.

2. Among the plaintiffs, Sadlowski, Jr. and Samargia are union members whose rights are protected by the Bill of Rights Title of LMRDA (29 U.S.C. 411).

3. Defendant USWA is an International "labor organization" within the meaning of Section 3(i) of the Act.

4. Plaintiffs Sadlowski, Jr. and Samargia have "standing" to challenge Article V, Section 27 of the USWA Constitution.

5. Section 101(a)(4) of LMRDA provides in part as follows:

> "(4) Protection of the right to sue. No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its

officers are named as defendants or respondents in such action or proceeding. . . ."

6. At the time this action was filed, plaintiffs had no adequate, readily ascertainable internal union remedies available to them to challenge Article V, Section 27. *Chambers v. Local Union No. 639*, 578 F.2d 375, 385-86 & notes 12-20 (C.A.D.C., 1978); *Semancik v. District 5, UMW*, 466 F.2d 144, 150 (C.A. 3, 1972); *Steib v. New Orleans Clerks; Local 1497*, 436 F.2d 1101, 1106 (C.A. 5, 1971); *Detroy v. American Guild of Variety Artists*, 286 F.2d 75, 80-81 (C.A. 2, 1961); *Cefalo v. International Union of District 50*, 311 F.Supp. 946, 953-54 (D.D.C., 1970).

7. The right-to-sue provision contained in Section 101(a)(4) has been construed to prohibit *any* limitation on the exercise of that right. *NLRB v. Industrial Union of Marine & Shipbuilding Workers*, 391 U.S. 418, 424-25 (1968); *Operating Engineers Local Union No. 3 v. Burroughs*, 417 F.2d 370 (C.A. 9, 1969).

8. The right-to-sue is too precious a right to subject union members to disqualification from office or union discipline because they are found to have improperly solicited or received monies or retained counsel or instituted an action which is later found by the Union or its Committee to have been frivolous, unwarranted or commenced in bad faith. *NLRB v. Industrial Union of Marine & Shipbuilding Workers, supra; Operating Engineers v. Burroughs, supra; Pawlak v. Greenawalt*, 628 F.2d 826, 829-30 (C.A. 3, 1980); *Lacy v. Highway Freight Employers*, 99 LRRM 2403 (W.D. Tenn., 1978), aff'd, 620 F.2d 303 (C.A. 6, 1980); *Ross v. International Bro. of Electrical Workers*, 544 F.2d 1022, 1024 (C.A. 9, 1976).

9. Article V, Section 27 of the USWA Constitution, on its face and even after being construed by the Union-

appointed Committee unduly and unlawfully limits the rights of USWA members who are candidates for high union office to sue in the court and to be able to collect funds necessary to bring suit, to retain counsel and initiate suits or administrative proceedings without fear of disqualification or discipline.

10. The unlawful effects of the rule cannot be separated from the rule as a whole. Because the application of the rule to litigation support is not "functionally independent" from the balance of the rule, as is obvious from its text and because the confusion on what can and cannot be done under the rule will have a chilling effect on guaranteed rights of member candidates, the entire rule must be declared invalid and of no force and effect, pursuant to Section 101 of LMRDA (29 U.S.C. 411(b)). *United States v. Reese*, 92 U.S. 214, 221 (1876); *United States v. JuToy*, 198 U.S. 253, 262 (1905); *Aptheker, et al. v. The Secretary of State*, 378 U.S. 500, 515-516 (1964); *United States v. Robel*, 389 U.S. 258, 267 (1969); *United States v. Jackson*, 390 U.S. 570, 586 (1968); *Pawlak v. Greenawalt, supra; Retail Clerks Union v. Retail Clerks Int'l Ass'n*, 299 F. Supp. 1012, 1025-26 (D.D.C. 1969); *Ryan v. IBEW*, 361 F.2d 942, 946 (C.A. 7, 1966), cert denied, 385 U.S. 935; *Parks v. IBEW*, 314 F.2d 886, 893-94 n. 7 (C.A. 4, 1963).

11. Section 102 of LMRDA authorizes the Court to grant "such relief (including injunctions) as may be appropriate." In addition to declaring Article V Section 27 to be of no force and effect, the Court has a "broad mandate" to fashion relief to fit the circumstances of the case. *Hali v. Cole*, 412 U.S. 1, 10-11 (1973). The Court has determined that defendant and its agents should be enjoined from implementing or enforcing the rule and, due to the short period remaining until elections are held in May, notice to all members should be provided inform-

ing them of the Court's decision. *Hodgson v. United Mine Workers*, 344 F. Supp. 17, 37 (¶ 18) (D.D.C. 1972).

12. The Court concludes that plaintiffs and others similarly situated would be irreparably harmed if injunctive relief were not granted; that by comparison, the Union will not be harmed by the relief which is ordered; and finally, the public interest in democratic union elections and the unfettered right-to-sue as manifested in LMRDA will be enhanced by the grant of injunctive relief.

/s/ George L. Hart, Jr.
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C. A. No. 79-2953

EDWARD SADLOWSKI, JR., *et al.*,
Plaintiffs,
v.
UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,

and

F. RAY MARSHALL,
Defendants.

Filed Jan. 30, 1981

ORDER

Upon consideration of defendant Secretary of Labor's Motions to Dismiss and for a Protective Order, and of plaintiffs' Motion for Summary Judgment, and of defendant's United Steelworkers Union Motion for Summary Judgment, and after consideration of the entire record herein, and after argument of counsel, it is by the Court this 30th day of January, 1981,

ORDERED, that:

1. The Motion to Dismiss filed by the defendant Secretary of Labor is granted for lack of jurisdiction;

2. The Motion of the Secretary of Labor for a Protective Order is dismissed as moot;

3. With respect to Defendant United Steelworkers of America's Motion to Dismiss the Complaint, or, in the Alternative, For Summary Judgment, the Court makes the following rulings:

a. Article V, Section 27 of the USWA Constitution which completely bans the solicitation or receipt of contributions from non-USWA members too broadly trenches upon protected freedoms of expression and association and therefore, would violate the guarantees contained in the First Amendment if state action were present here. I rule that there is not the necessary involvement of state action, at least up to this point, in light of the holding in the Supreme Court opinion in *United Steelworkers of America* v. *Weber*, 443 U.S. 193, 99 S.Ct. 2721, 2727 (1979).

b. Therefore, the Court hereby grants the Motion of the USWA to Dismiss Counts I, II and III of the Complaint.

4. The Motion of the USWA for Summary Judgment as to Count V of the Complaint is granted.

5. With respect to plaintiffs' Cross-Motion for Summary Judgment, the Court makes the following rulings:

a. The Cross-Motion for Summary Judgment as to Count IV of the Complaint is granted. The Court finds that Article V, Section 27 of the USWA Constitution unduly and unlawfully restricts the right of candidates for union office to initiate legal and administrative proceedings and to obtain the funds necessary to bring such actions or to enforce their rights relating to union elections and that these unlawful effects cannot be separated from the rule as a whole. The rule is therefore inconsistent with the guaranteed rights set forth in Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act (29 U.S.C. 411(a)(4)).

IT IS FURTHER ORDERED,

1. Article V, Section 27 of the USWA Constitution is declared to be inconsistent with the rights guaranteed to union members set forth in Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act;

2. Pursuant to Section 101(b) of the Act, Article V, Section 27 of the USWA Constitution is invalid and of no force and effect;

3. Defendant United Steelworkers of America, its officers, agents, representatives, attorneys and anyone acting in concert with them, are hereby permanently enjoined from implementing or enforcing Article V, Section 27 of the USWA Constitution.

4. Defendant USWA shall publish a notice, the contents and form of which shall be agreed upon by counsel for the parties, or, in the absence of agreement, determined by the Court, in three successive issues of *Steel Labor* commencing with an issue to be determined by the Court, informing all USWA members that Article V, Section 27 has been declared invalid and is of no force and effect; and

IT IS FURTHER ORDERED, that the terms of this Order shall be stayed until February 16, 1981 at 4:00 p.m.; and

IT IS FURTHER ORDERED, that plaintiffs' Motion for Sumary Judgment on Counts I, II, III and V be and the same is hereby denied and defendant's United Steelworkers of America's Motion for Summary Judgment on Count IV be and the same is hereby denied.

/s/ George L. Hart, Jr.
United States District Judge

APPENDIX C

SUPREME COURT OF THE UNITED STATES

No. A-1053

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
Petitioner,
v.
EDWARD SADLOWSKI, JR., AND F. RAY MARSHALL,
SECRETARY OF LABOR

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner,

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 28, 1981.

/s/ Warren E. Burger
Chief Justice of the United States

Dated this 19th day of June, 1981

Joint Appendix

Office - Supreme Court, U.S.
FILED
DEC 31 1981
ALEXANDER L. STEVAS
CLERK

No. 81-395

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

UNITED STEELWORKERS OF AMERICA,
Petitioner,

v.

EDWARD SADLOWSKI, JR., JOSEPH SAMARGIA, EDWARD SADLOWSKI, SR., LEONARD S. RUBENSTEIN, and JAMES MILLER,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED AUGUST 28, 1981.
CERTIORARI GRANTED NOVEMBER 2, 1981.



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RELEVANT DOCKET ENTRIES IN THE DISTRICT COURT

DATE	PROCEEDINGS
1979	
Oct. 31	COMPLAINT; attachment
1980	
Jan. 10	MOTION of deft. #1 to dismiss or in the alternative, for summary judgment; statement; memorandum; affidavits & exhibits (in binder)
Feb. 21	MOTION by pltfs. for Summary Judgment; Statement of Material Facts as to which there is no genuine dispute and Supporting affidavits and Exhibits (Affidavit of Edward Sadlowski, Jr.; Exh. A; Affidavit of Joseph Samargia; Affidavit of James Balanoff; Affidavit of Clyde W. Summers, Affidavit of H.W. Benson, Affidavit of Robert Hauptman; Attachment A thru C, Affidavit of Edward Sadlowski, Sr., Affidavit of Leonard S. Rubenstein, Affidavit of Judith Olingy, Affidavit of Judith R. Schneider); P and A's Table of Contents, Table of Authorities
May 02	REPLY MEMORANDUM of deft. #1 in support of motion to dismiss or, in the alternative, for summary judgment and memorandum in opposition to pltfs. motion for summary judgment; table of contents; table of authorities; statement of genuine issues; declaration of Robert M. Weinberg; declarations & exhibits in further support of motion for summary judgment & in opposition to pltfs motion for summary judgment (IN BINDER)
June 02	REPLY MEMORANDUM by pltfs. in support of motion for summary judgment, table of contents, reply to defts. statement of genuine issues, supplement affidavit of Herman Benson

DATE	PROCEEDINGS
1980	
June 19	SUPPLEMENT affidavit of Edward Sadlowski, Jr. exhibits # 1-5; affidavit of Clyde W. Summers, exhibits A & B; James Balanoff; affidavit of Eva Hope Bothwell, exhibits A-E.
June 30	SUPPLEMENTAL MEMORANDUM of USWA Bringing to the Court's Attention the decision of the CCAC and Other Materials, exhibit A, A-1, A-2, B, C
Jul. 11	RESPONSE by pltfs. to defts. #1 supplemental memorandum
1981	
Feb. 02	FINDINGS OF FACT & CONCLUSIONS OF LAW filed 1-30-81
Feb. 02	ORDER filed 1-30-81 granting for lack of jurisdiction the motion of deft. Secretary of Labor to dismiss; dismissing as moot the motion of deft., Secretary of Labor for a protective order; granting motion of deft., United Steelworkers of America to dismiss Counts I, II & III of the complaint and motion of said deft. for summary judgment as to Count V of the complaint is granted; granting pltfs. cross-motion for summary judgment as to Count IV; deft., United Steelworkers of America is permanently enjoined from enforcing Article V, Section 27 of the USWA Constitution; staying the terms of this order until 2-16-81 at 4:00 p.m.; plts. motion for summary judgment on Counts I, II, III and V are denied; deft. United Steelworkers of America motion for summary judgment on Count IV is denied.

DATE	PROCEEDINGS
Feb. 05	NOTICE OF APPEAL by deft. United Steelworkers of America, AFL-CIO-CLC from order filed 1-30-81; $65.00 docketing fee and $5.00 filing fee paid & credited to U.S.; copies sent to Joseph L. Rauh, Joseph A. Yablonski, Daniel B. Edelman & Jason D. Kogan

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

This suit challenges the constitutionality and legality of a rule adopted by the United Steelworkers of America, AFL-CIO-CLC ("USWA") which prohibits candidates and would-be candidates for International and District Director offices from soliciting or accepting funds, services, or assistance in any election from anyone who is not a member of the USWA. In USWA elections, the "Official Family" composed solely of incumbent-office-holders designates which candidates it will support for International Office. The campaigns of "Official Family" candidates are financed principally by funds solicited from the USWA officers and staff. The USWA members who have opposed "Official Family" candidates in recent elections have been required to rely upon donations of funds, services and assistance from rank and file members, but also, upon their families, friends and individuals outside of the USWA.

The rule barring "outsider support" was conceived by the USWA "Official Family" as a means to insulate themselves permanently from electoral challenge. The "rule" has been reviewed and approved by representatives of the United States Department of Labor and its present Secretary, Defendant F. Ray Marshall. The rule violates the First Amendment of the Constitution of the United States because it restricts union members' rights of freedom of association, freedom of speech, and freedom to associate with others to redress grievances (Count I). The rule violates the First Amendment speech and associational rights of non-members of USWA (Count II). The rule, as adopted and approved, also violates the National Labor Relations Act (29 U.S.C. 151 *et seq.*), which must be read consistent with the First and Fifth

Amendments of the Constitution (Count III). The rule places limitations on members' rights to sue in violation of Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act (29 U.S.C. 411(a)(4)) (Count IV). Finally, the rule is inconsistent with the fundamental purpose of Title IV of LMRDA which is to foster and assure open and democratic elections in unions, and specifically, it contravenes Section 401(g) of LMRDA (29 U.S.C. 481(g)), the exclusive statutory limitation which Congress placed on union campaign financing (Count V).

Jurisdiction

1. The jurisdiction of this Court is invoked under the First Amendment of the Constitution of the United States and 28 U.S.C. §§ 1331 and 1361. The amount in controversy exceeds $10,000, exclusive of interests and costs. Jurisdiction is also premised on 28 U.S.C. 1337, 2201 and 2202 and Section 102 of LMRDA (29 U.S.C. 412).

Parties

2. Plaintiff Edward Sadlowski, Jr., is a citizen of the State of Illinois. He is a member in good standing of the USWA, and was a candidate for the office of International President of the USWA in the Union's most recent International election. According to the tally announced by the USWA, Sadlowski was defeated by the incumbent USWA President Lloyd McBride.

3. Plaintiff Joseph Samargia is a citizen of the State of Minnesota. He is also a member in good standing of the USWA. In 1981 he may be a candidate for the position of District Director USWA District 33.

4. Plaintiff Edward Sadlowski, Sr., is a citizen of the State of Illinois. He was a member of the USWA for many years until his retirement in 1969. As a non-member of the USWA, he actively supported his son's candidacy for District Director in 1973 and 1974 and for President in 1976 and 1977.

5. Plaintiff Leonard S. Rubenstein is a citizen of the District of Columbia. He is not a member of the USWA, but in 1976 he made contributions to support the candidacy of Plaintiff Sadlowski, Jr. for USWA President.

6. Plaintiff James Miller is a citizen of the Commonwealth of Massachusetts. He is a member of the bar of the Commonwealth of Massachusetts. He is not a member of USWA, but in 1976 and 1977 he performed legal services during the USWA election in an effort to assure a fair election.

7. Defendant, United Steelworkers of America, AFL-CIO-CLC, is an unincorporated labor organization within the meaning of Section 2(5) of the National Labor Relations Act, as amended, 29 U.S.C. 152(5) and Sections 3(i) and 401(a) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. §§ 401(i), 481(a)). The USWA maintains offices in the District of Columbia at 815 Sixteenth Street, NW, Washington, DC.

8. Defendant F. Ray Marshall is the Secretary of Labor of the United States. He maintains his offices at 200 Constitution Avenue, NW, Washington, DC. The Secretary of Labor is entrusted with administration and enforcement of the Labor-Management Reporting and Disclosure Act.

9. The USWA was formed initially as the Steel Workers Organizing Committee in 1936 shortly after Congress enacted the National Labor Relations Act in 1935 which established the right of employees to organize and bargain collectively with their employers.

10. The USWA enjoys tax-exempt status by virtue of Section 501(c)(5) of the Internal Revenue Code, which relieves it of any obligation to pay taxes on dues received from members and other income generated by its assets which now exceed $200 million.

11. By operation of the National Labor Relations Act, the USWA has been certified by the National Labor Rela-

tions Board as the exclusive bargaining agent for employees of many employers engaged in interstate commerce. The USWA has been authorized by law and has executed collective bargaining agreements thereunder which make the USWA the exclusive collective bargaining agent for all employees covered by the collective bargaining agreements whether the employees seek such representation or not and make membership in the USWA and/or payments of dues to USWA a condition of employment by employees of such employers whether the employees want tc make such payments or not. In addition, LMRDA provides for detailed federal regulation of the election of union officers which elections are required to be conducted in accordance with the union's constitution and by-laws.

12. Members of the USWA are subject to the provisions of the USWA Constitution which, by federal statute and judicial decisions, has the force and effect of law. (A copy of the current USWA Constitution is appended as Exhibit A). Members can be fined, disciplined or expelled from membership for violation of the USWA's Constitutional provisions.

13. International officers of the USWA are elected in referendum elections conducted among the Union's membership every four years. At present there are nearly 1.3 million members of the USWA located in every state, the District of Columbia, and throughout the provinces of Canada. The next election is scheduled to be held on May 28, 1981.

14. District Directors in USWA's twenty-five districts are also elected every four years by referendum vote of members within their respective districts. The next election is scheduled to be held on May 28, 1981.

15. The incumbent officers and District Directors, described by former USWA President I. W. Abel, as the "Official Family", select, endorse and support candidates

for the Union's International offices as well as candidates for District Director.

16. In the 1973 election, the "Official Family" selected, endorsed and supported candidates Abel, Walter Burke and John Johns for USWA's top three offices. The "Official Family" also supported Sam Evett for the position of District Director of District 31. Evett was opposed in that election by Plaintiff Edward Sadlowski, Jr.

17. Despite charges of vote fraud by Plaintiff Edward Sadlowski, Jr., the USWA installed Evett as the Director of District 31. Sadlowski retained the services of undersigned counsel, Joseph L. Rauh, Jr., to handle his complaint with the Secretary of Labor under Title IV of LMRDA.

18. Ultimately, the Secretary of Labor instituted an action to void Evett's election. Plaintiff Sadlowski, Jr., through attorney Rauh, intervened. Thereafter, a consent order was entered, a re-run election held which Plaintiff Sadlowski, Jr. won by a two-to-one margin and he was installed as District 31 Director.

19. Attorney Rauh and the Association for Union Democracy monitored compliance by Defendant USWA with the consent order. Plaintiff Sadlowski, Jr. was unable to pay attorney Rauh his regular hourly rate for services rendered. Instead, attorney Rauh has sought payment of his fees by the USWA which has been vigorously resisted not only by the USWA but by Defendant Marshall as well. Sadlowski did not have sufficient resources to reimburse the Association for Union Democracy for its efforts in monitoring the Consent Order to insure a fair election.

20. In 1976, Plaintiff Sadlowski, Jr. announced his candidacy for the Presidency of the USWA, and he led a slate of candidates which challenged the "Official Family" candidates headed by Lloyd McBride.

21. Plaintiff Sadlowski, Jr. and his running mates were again represented by attorney Rauh, who instituted on their behalf two suits in the pre-election period, *Rodriguez* v. *United Steelworkers of America*, (C.D. Calif., C.A. No. 76-3452-LTL); *Sadlowski* v. *United Steelworkers of America*, (W.D. Pa., C.A. No. 76-1420) and a suit, following the election, against the Secretary of Labor for failing to investigate and failure to institute suit to set aside the election which the USWA claimed had been won by McBride and his slate, *Sadlowski* v. *Marshall*, (D.D.C., C.A. No. 78-0250) appeal pending (C.A.D.C., No. 79-1461). Attorney Rauh received no compensation for his services rendered in connection with any of the three suits discussed in this paragraph.

22. During the 1977 election, the campaign of the "Official Family" slate headed by McBride was financed principally through financial contributions obtained from the USWA staff. Indeed, "Official Family" records produced and depositions taken in *McBride* v. *Sadlowski* (Cook Cty. Civ. Ct. 76CH-7669) demonstrate that 90% of the total of $180,000, which the McBride campaign admitted raising as of January, 1977, was obtained from USWA's staff and members of the "Official Family."

23. By contrast, Plaintiff Sadlowski, Jr. was unable to solicit any substantial contributions from staff appointed by the Official Family and President I. W. Abel. Sadlowski concentrated his campaign fund raising efforts among USWA rank and file members in his District and among members of the general public, through mail solicitations, raffles, receptions and dinners.

24. During the 1977 election, the Association for Union Democracy sponsored and paid for a poll-watching effort to assure a modicum of fairness in the election. Plaintiff Miller was employed by the Association of Union Democracy at a very modest rate—far below the ordinary commercial rate he could charge for his service—to organize and coordinate the poll-watching effort. The

USWA brought suit to block the Association's activities in USWA elections, but has, thus far been unsuccessful. *McBride, et al.* v. *Rockefeller Family Fund, et al.*, (S.D. N.Y., No. 78 Civ. 1762), appeal pending (C.A. 2, No. 79-1295).

25. Plaintiffs Sadlowski, Jr. and Samargia are steelworkers who until attaining union office worked respectively in the mills and iron ore mines. They and others similarly situated who might challenge members of the "Official Family" in International or District Director elections are men of modest means who do not have the personal assets to underwrite effective campaigns for International and District Director offices.

26. Without the aid and assistance of counsel, willing to undertake representation for no fee, a reduced fee, or on a contingency—*i.e.*, if suits brought were successful, fees would be sought from the USWA—Plaintiff Sadlowski, Jr. would have been unable to undertake a challenge in the 1973 District Director election, to participate in the successful re-run of that election, and to seek election to the Union's highest office in 1977.

27. Without the financial contributions solicited and received from non-USWA members, including family, friends and other individuals, Plaintiff Sadlowski, Jr. would have been unable to mount an effective campaign in either 1973 or 1977.

28. Without the activities of the Association for Union Democracy, Sadlowski and his running mates would have been unable to monitor polling and potential election day violations which is essential to assure a fair election. Even with the activities of the Association for Union Democracy, only a fraction of the election was monitored.

29. Having seen effective campaigns mounted against the "Official Family" and knowing that Sadlowski and other candidates opposing "Official Family" candidates could not mount such effective campaigns against them

without outside legal support, and without contributions of services, funds, and assistance from individuals who are not USWA members, USWA President McBride and other members of the "Official Family" on the USWA Executive Board sponsored and urged adoption of a union rule which would prohibit any candidate for International office or for District Director from soliciting or receiving anything of value (except an individual's time) from anyone who is not a member of the USWA.

30. The rule, which now appears as Section 27 of Article V of the Constitution of the USWA, provides in relevant part as follows:

> No candidate (including a prospective candidate) for any position set forth in Article IV, Section 1, and supporter of a candidate may solicit or accept financial support, or any other direct or indirect support of any kind (except an individual's own volunteered personal time) from any non-member. For purposes of this Section, the term non-member means any person who is either not eligible for membership under Article III or not in good standing or any foundation, corporation or other entity whose funds are derived in whole or in part from any person not eligible for membership under Article III or not in good standing. (Exhibit A, pp. 42-43).

31. The rule goes on to provide that the Union's International Executive Board—which is comprised almost entirely of members of the "Official Family"—is to adopt regulations to implement the anti-outsider provision, which regulations are to be enforced, incredible as it may sound, by a group of outsiders to be selected by the Executive Board and to be known as the Campaign Contribution Administrative Committee. The Committee is empowered to disqualify any candidate who accepts direct or indirect support from any non-USWA member. (Exhibit A, pp. 43-47).

32. The Regulations adopted by USWA define "support" and "prohibited support" for any candidate or potential candidate as follows:

"What Constitutes "Support"

Article V. Section 27 of the International Constitution prohibits "financial support, or any other direct or indirect support of any kind (except an individual's own volunteered personal time)" to a candidate from a non-member of USWA. "Support" means assistance of any kind related to candidacy in an election under Article V.

1. Permissible Support

Article V. Section 27 establishes one and only one exception to the total prohibition against the providing of support by non-members. That exception is a non-members' own volunteered personal time. *It is not a violation for a non-member to devote time to helping a candidate without receiving compensation for that time. But with this single exception, the prohibition against support by non-members is absolute.* Thus, for example, it is permissible for a non-member public relations professional to volunteer his or her own personal time, but it would not be permissible for such individual to volunteer, or for a candidate to accept, such professional's facilities, secretarial or staff help, office space, or any other aid free of charge. It would also be impermissible for another non-member to compensate the public relations professional for his or her volunteered personal time.

2. Prohibited Support

a) Direct financial support

Direct financial support of a candidate by a non-member is, of course, prohibited by the terms

of Section 27. Accordingly, candidates and their supporters shall not solicit or accept contributions, whether in currency or check, unless and until they have determined that the contributor is a member of the Union.

b) Indirect support

All forms of indirect assistance of a candidate by a non-member, other than an individual's own volunteered personal time, are prohibited. Thus *a non-member may not provide a candidate*, any other member, or any other supporter *with* such *items* as printing services, *office supplies*, office space, meeting space, mailing lists *or other items of value* to the campaign *unless the non-member charges and is paid the normal commercial price for such goods or services.* Nor may a non-member use such items of value to produce or distribute material supporting a candidate, even though the materials are not provided to the candidate or the candidate's supporters.

It is a violation for a non-member to extend credit to a candidate or other member in connection with the provision of goods or services which are to be used in support of candidacy, *except upon such terms* and under such conditions *as* the supplier of such goods or services normally *extends credit to commercial customers.*

It is improper for a candidate or other member to borrow money from a non-member for use in support of candidacy, with the following single exception: money may be borrowed from a regular commercial lending institution, on such terms and under such conditions as that institution normally lends money.

These are simply examples of Section 27's prohibition against any form of indirect non-member assistance to a candidate." (Emphasis added).

33. The Secretary of Labor, through his subordinates, has sanctioned and approved the "outsider rule" which action gives the rule the force and effect of law and assures that the rule will be applicable to the USWA elections scheduled to be held in 1981.

34. The conduct of the USWA in enacting the "outsider rule" and in promulgating regulations to implement and enforce it coupled with the Secretary of Labor's approval and sanctioning of the rule constitute "governmental action" which cannot contravene the First Amendment of the United States Constitution.

35. If the "outsider rule" remains in full force and effect, it is unlikely that any candidate will be able to mount an effective challenge against any "Official Family" candidates in the 1981 election.

36. Plaintiff Sadlowski, Jr. or one of his supporters may be a candidate for USWA President in 1981. Plaintiff Joseph Samargia may be a candidate for District Director of USWA District 33 in 1981. If they are unable to rely upon financial and other support from their families, friends, individual acquaintances and the general public, effective campaigns for those offices cannot be mounted. Thus, as much or more than any other factor, the presence or absence of the "outsider rule" will determine their decisions whether or not to run for the respective offices.

37. Plaintiff Rubenstein, Miller and Sadlowski, Sr. have offered their services in USWA elections or contributed funds to the candidacies of Plaintiff's Sadlowski, Jr. and other USWA candidates in the past. They desire to render similar support in future elections provided that their activities and support do not disqualify the candidate for whom or to whom such services and funds were contributed.

COUNT I

(The "Outsider" Rule Violates The First Amendment Rights of USWA Members)

38. Plaintiffs adopt and incorporate herein by reference paragraphs 1 through 37, inclusive, of this Complaint.

39. The First Amendment guarantees to all citizens, including union members, the right of free speech, specifically the right to solicit funds from individuals for internal union political purposes.

40. The First Amendment guarantees to all citizens, including union members, the freedom to assemble with others, such as specifically, the right to attend fund raising events such as raffles, dinners and receptions.

41. The First Amendment guarentees to all citizens, including union members, the freedom to associate with others for the advancement of ideas and beliefs, and, specifically, the freedom to associate with others to petition for redress of grievances in the courts and before agencies and departments of the federal government.

42. The USWA's promulgation of the "outsider" rule and the Secretary of Labor's sanctioning and approval of the rule violate the First Amendment and any attempted enforcement of it by the USWA or the Secretary further violates the First Amendment rights of Plaintiff USWA members.

COUNT II

(The "Outsider Rule" Violates the First Amendment Rights of Non-USWA Members)

43. Plaintiffs adopt and incorporate herein by reference paragraphs 1 through 42, inclusive, of this Complaint.

44. Plaintiffs Rubenstein, Miller and Sadlowski, Sr. are individuals who have in the past contributed services

and funds in USWA elections and who would make similar contributions of services and funds in future USWA elections, but for the rule which prohibits such contributions on pain of disqualification and discipline of the recipients.

45. As citizens of the United States, Plaintiffs Rubenstein, Miller and Sadlowski, Sr. are affected by policies and practices of the USWA. The leadership of the USWA, which determines and implements its policies, affects not only USWA members, but non-members as well, inasmuch as the union's policies and practices affect the political and economic health of the nation in which every citizen has a stake.

46. The First Amendment of the Constitutional guarantees to all citizens the freedom to associate for the advancement of beliefs and ideas.

47. The First Amendment also guarantees to all citizens the freedom to associate for purposes of redressing grievances including the commencement and prosecution of litigation and agency proceedings.

48. The First Amendment guarantees to all citizens the freedom to assemble and to participate in raffles, fund raising dinners, receptions and other events to enhance and aid the candidacies of others seeking election to union office.

49. The USWA, by adopting the "outsider rule", and the Secretary of Labor, by sanctioning and approving the rule, have violated and will violate in the future the First Amendment rights of Plaintiffs Rubenstein, Miller and Sadlowski, Sr. and all others similarly situated who desire to contribute services or funds in future USWA elections.

COUNT III

(The "Outsider Rule" Violates the National Labor Relations Act as it Must be Read Consistent With the First and Fifth Amendments of the Constitution)

50. Plaintiffs adopt and incorporate herein by reference paragraphs 1 through 49 of this Complaint.

51. Under the National Labor Relations Act, the USWA is vested with the exclusive authority to bargain on behalf of persons employed within units for which it is the designated collective bargaining representative. As such, its decisions are compulsory as they affect individual employees within such units.

52. Further, under NLRA, the USWA is empowered subject to Section 14(b), 29 U.S.C. 164(b), to enter into contract provisions compelling all unit employees to associate themselves with it either by membership in the USWA or by paying the specified initiation fees and dues.

53. Necessarily inherent as a matter of constitutional right in the quasi-governmental and taxing powers statutorily conferred on USWA by the NLRA is the corollary that persons required by law to associate themselves with the USWA, have the right to have the choice of the officers made through fair and democratic elections. Any rule which denies to challengers the right to receive disinterested financial support from outsiders so as to try to match the advantage of the incumbent regime in access to the membership and in in-house fundraising among staff employees renders the election unfair and undemocratic and violative of NLRA or of the Fifth Amendment.

54. In conferring on USWA and other unions the power to compel unit employees to associate with them as to condition of continued employment, NLRA defines and limits the extent to which unions may permissibly

trench upon employees' freedom to associate with whomever they wish in support of common political objectives. Just as the union cannot consistent with NLRA require those compelled to pay dues to join with it in financial support of candidates for office outside the union, it cannot deny their right to join with persons outside the union in financial support of candidates for union office. Both aspects of the right to associate are necessarily retained by the employees and protected by NLRA itself. Unless NLRA is so construed it would unconstitutionally infringe rights of association protected by the First Amendment.

COUNT IV

(The "Outsider Rule" Violates
Section 101(a)(4) of LMRDA and
Should be Declared of No Force and Effect).

55. Plaintiffs adopt and incorporate herein by reference paragraphs 1 through 54, inclusive, of this Complaint.

56. Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act, provides in relevant part as follows:

> Protection of the right to sue.—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding. (29 U.S.C. 411(a)(4)).

57. In order to conduct a viable and effective campaign for International office in the USWA or for the office of District Director, a candidate requires the services of counsel to render advice as to the meaning and application of USWA's Constitution and by-laws, to enforce the pre-election provisions of LMRDA, to prevent retaliatory action or reprisals by the "Official Family", to

deal with the Secretary of Labor, to gather information regarding electoral violations, and where necessary, to draft and file with the Secretary of Labor on behalf of a losing candidate a complaint under Title IV of LMRDA, to assist the Secretary in his investigation and, ultimately, to intervene to protect the candidate's interests in any suit brought by the Secretary under Title IV or to sue the Secretary if, without satisfactory reasons, he decides not to file suit to upset the election.

58. Plaintiffs Sadlowski, Jr., Samargia and others similarly situated who may be candidates for USWA offices do not have the personal resources to pay their counsel at counsel's normal commercial rate, if at all. In the past their counsel have provided services at no cost, as a reduced cost or on a contingent basis (if litigation is undertaken which is successful, fees will be sought from the Union). Such arrangements have been judicially sanctioned. The USWA, however, continues to resist payment of any attorneys' fees incurred in the representation of Sadlowski in the administrative and judicial proceedings which resulted in the voiding of Evett's 1973 election.

59. The "outsider rule" and the regulations promulgated by the USWA's International Executive Board prohibit such arrangements between candidates and counsel in future elections.

60. By restricting access to counsel, the "outsider rule" and the implementing regulations unreasonably restrict exercise of the right of USWA members to institute actions in court or before any administrative body.

61. Section 101(b) of LMRDA provides that "[a]ny provision of the constitution of bylaws of any labor organization which is inconsistent with the provisions of this Section [101(a)(1)-101(a)(5)] shall be of no force and effect."

62. Because the "outsider rule" and the regulations promulgated to implement it will impede and impair exercise by USWA members of their right to sue as guaranteed by Section 101(a)(4) of the Act, both the rule and the regulations are void and of no force and effect.

63. Plaintiffs Sadlowski and Samargia have no internal union remedies available to them to obtain nullification of the "outsider rule" and the regulations which had been adopted and approved at the Union's Convention. Moreover, any appeal or complaint they could conceivably have would be to the Union's Executive Board which is almost entirely comprised of "Official Family" members, and, therefore, would be futile.

COUNT V

(The "Outsider Rule" is Void Because It is Inconsistent With The Provisions of Section 401(g).

64. Plaintiffs adopt and incorporate herein by reference paragraphs 1 through 63, inclusive, of this Complaint.

65. When Congress enacted LMRDA, it established in Section 401(g) exclusive limitations on campaign financing in union elections.

> No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this subchapter. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election. (29 U.S.C. 481(g)).

66. The "outsider rule" goes far beyond the limitations established by Congress and is, therefore, void.

67. The "outsider rule" and the regulations promulgated by the USWA provide for self-perpetuation of incumbent officers and contravene the central purpose and intent of Congress in enacting LMRDA which was to assure fair and democratic elections in American trade unions. To ban all outside support to would-be challengers—when "Official Family" candidates remain free to tap union staffers for campaign contributions—would stand LMRDA on its head. Under such circumstances, no meaningful electoral challenge could ever be mounted against the "Official Family" and union democracy would be squelched rather than fostered. The "outsider rule" is, therefore, void.

Allegations of Irreparable Harm

68. Plaintiffs will be irreparably harmed as follows if the "outsider rule" is not declared invalid and if injunctive relief is not granted which restrains its implementation:

a. Their rights of assembly, speech and association and their rights to associate together for purposes of litigation and redress of grievances have been substantially chilled by the promulgation and sanctioning of the "outsider rule" and regulations and will continue to be substantially chilled and impaired until the rule is declared unlawful;

b. Their rights to retain counsel to institute litigation or administrative proceedings have been and will be substantially chilled, impaired and limited;

c. Their rights to seek and hold union office have been and will be substantially chilled, jeopardized and impaired; and

d. Their rights to engage in fund-raising activities prior to the 1981 elections will be substantially chilled, impaired and limited.

69. The institutional interest of Defendant USWA will not be impaired or harmed if injunctive relief is granted.

70. The Secretary of Labor's role as the guardian and defender of union members' rights to democratic union elections, will be enhanced and strengthened if the requested injunctive relief is granted.

71. Plaintiffs have no adequate remedy at law.

72. The granting of declaratory and injunctive relief will be in the public interest.

WHEREFORE, Plaintiffs pray this Court to enter judgment:

A. Declaring that Defendant USWA's "Outsider Rule" and regulations promulgated by its Executive Board violate the First Amendment rights of USWA members;

B. Declaring that Defendant USWA's "Outsider Rule" and regulations promulgated by its Executive Board violate the First Amendment rights of non-USWA members;

C. Declaring that the Defendant USWA's "Outsider Rule" and regulations promulgated by its Executive Board violate the National Labor Relations Act;

D. Declaring that the "Outsider Rule" violates Sections 101(a)(4) and 401(g) of LMRDA, and is, therefore, void and of no force and effect;

E. Enjoining Defendant USWA, its officers, agents, representatives, attorneys and anyone acting in concert with the, including any member of the Campaign Contribution Administrative Committee, from implementing or enforcing Article V, Section 27 of the USWA Constitution;

F. Directing Defendant USWA to publish a notice, in a form approved by Plaintiffs' counsel and the Court

in three successive issues of *Steel Labor*, which informs all USWA members that Article V, Section 27 of the USWA Constitution is unvalid and of no force and effect;

G. Enjoining Defendant Secretary of Labor from approving, sanctioning or giving any force or effect to the "Outsider Rule" or the USWA regulations;

H. Awarding to Plaintiffs the costs of this action, including attorneys fees; and

I. Granting such preliminary and other relief as the Court deems appropriate.

[Signature Omitted in Printing]

MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

Defendant United Steelworkers of America, AFL-CIO-CLC (hereinafter "USWA") hereby moves pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure, to dismiss this action because the complaint fails to state a claim upon which relief can be granted. The grounds for this motion are set forth in "Memorandum Of Defendant United Steelworkers Of America, AFL-CIO-CLC, In Support Of Motion To Dismiss Or, In The Alternative, For Summary Judgment". Proposed Order No. 1, attached hereto, relates to this motion to dismiss.

In the alternative, USWA moves pursuant to Rule 56, Federal Rules of Civil Procedure, for summary judgment because there is no genuine dispute as to any material fact, and on the undisputed material facts defendants are entitled to judgment dismissing the complaint. In support of this alternative motion, USWA submits the following materials:

(1) Statement Of Material Facts With Respect To Which There Is No Genuine Dispute;

(2) Affidavits and Exhibits In Support Of Defendant USWA's Motion For Summary Judgment; and

(3) Memorandum Of Defendant United Steelworkers Of America, AFL-CIO-CLC, In Support Of Motion To Dismiss Or, In The Alternative, For Summary Judgment

Proposed Order No. 2, attached hereto, relates to USWA's alternative motion for summary judgment.

[Signatures Omitted in Printing]

[AFFIDAVITS AND EXHIBITS
IN SUPPORT OF DEFENDANT
USWA'S MOTION FOR SUMMARY JUDGMENT]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Title Omitted in Printing]

AFFIDAVIT OF LYNN WILLIAMS

State of Pennsylvania,
County of Allegheny

Lynn Williams being duly sworn deposes and says:

1. I am the International Secretary of United Steelworkers of America, AFL-CIO-CLC (hereinafter "USWA"). I was elected to that office in a referendum election in February 1977, and assumed office on June 1, 1977. As Secretary, I have general responsibility for the conduct and administration of USWA's International elections—as spelled out in Article V of USWA's Constitution.

2. USWA is a labor organization, with approximately 1.3 million members located throughout the United States and Canada. It is the principal bargaining representative of employees in the steel, aluminum, container, copper, iron ore, lead, and chemical industries of the United States and Canada, as well as in many industries which fabricate products from ferrous and non-ferrous metals.

3. There are approximately 5,000 local unions affiliated with USWA. Each local union includes the USWA members employed at a particular plant, or at a group of plants. At each of these plants, USWA itself, and not the local union, serves as the exclusive bargaining agent and contracting party; the local unions act as USWA's

agents, assisting USWA in administering the collective bargaining agreements that USWA negotiates.

4. The highest governing body of USWA is its International Convention, which convenes biennially. Each of the local unions affiliated with USWA elects delegates to the Convention, and decisions at the Convention are made by the votes of the delegates. No person is entitled to vote at the Convention unless he has been duly elected as a delegate by a local union.

5. At each Convention, the delegates adopt an International Constitution, which governs the affairs of USWA until the next Convention. The Constitution currently in effect was adopted at the 1978 Convention. A copy of that Constitution is attached to the complaint filed in this case. The next Convention will be held in August, 1980 and that Convention will adopt a Constitution to replace the one currently in effect.

6. The Constitution provides a structure for the governance of USWA between Conventions. It provides for five International Officers (President, Secretary, Treasurer, Vice-President-Administration, and Vice-President-Human Affairs), a National Director of Canada, and 25 District Directors. These persons collectively constitute USWA's International Executive Board. These positions are filled by referendum election among the members of USWA, with those elected serving four-year terms. The most recent election was held in 1977, and the persons elected in 1977 are currently in office. The next election is scheduled to be held on May 28, 1981.

7. USWA is one of the few large unions—and indeed is the largest—which elects its officers by referendum election. In most unions, officers are elected by the delegates attending a Convention. USWA has retained the referendum election because it provides for more direct membership determination of officers.

8. All of the members of USWA throughout the United States and Canada are eligible to vote in the referendum election for the five International officers. All of the members of USWA within Canada are eligible to vote for the National Director of Canada. For administrative purposes, USWA is divided into 25 geographic districts (22 in the United States, and 3 in Canada), and all of the members within a geographic district are eligible to vote for the District Director of that district.[1] All of these positions are filled in a single referendum election, with members voting on a single ballot for the five International officers and their District Director (and, in Canada, for the National Director of Canada as well).

9. The 1977 USWA election—in which the Presidential candidates were Edward Sadlowski, Jr., District Director of District 31 (USWA's largest district) and Lloyd McBride, District Director of District 34—was marked by an unprecedented infusion of financial contributions and expenditures by persons who are not members of USWA. The propriety and desirability of such "outsider" financial support to candidates in union elections became the subject of debate and dialogue both within and without the union.[2] Representative of the views of those who favored such "outsider" involvement was an article by Joseph L. Rauh, Jr., entitled "Outsiders' Assistance in Union Elections", which appeared

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[1] For example, District 29 encompasses the State of Michigan and the Northwestern portion of the State of Ohio. Approximately 3% of USWA's members are located in that geographic area, and they elect the District Director of District 29. (At one time, USWA had 38 districts. For administrative convenience, some of those districts have been merged over the years, with the result that the remaining districts are not numbered from 1 to 25 but, rather, have numbers ranging from 1 to 38.)

[2] Indeed, the "outsider" question became an issue in the election campaign, with the McBride slate challenging the propriety of "outsider" involvement and the Sadlowski slate defending it.

on the "op. ed" page of the New York Times three weeks before the election. A copy of that article is Appendix A to this affidavit. In that article, Rauh stated, *inter alia*:

> So the issue is clearly drawn. Do persons outside the trade-union movement have a sufficient interest in the outcome of union elections to warrant their participation as personal and noninstitutional contributors, volunteer workers, legal counsel, or otherwise?
>
> The answer seems self-evident. The trade-union movement is not an island unto itself, the only major force beyond public influence. The manner of operation of labor unions, the presence or absence of democratic union processes, and the decisions reached by the elected officials all vitally affect the public interest.
>
> * * * *
>
> The suggestion that the public has no interest in the next president of the Steelworkers Union with its 1.4 million members and its tremendous national responsibilities flies in the face of history and current experience.

The *New York Times* published an editorial a week prior to the election (Appendix B hereto), opposing Rauh's position on the ground that "outsider" contributions pose the threat that union officials will be beholden to outside interests rather than to the interests of the union members they are elected to serve. The *New York Times* editorial stated, *inter alia*, that the issues in the then-pending USWA election

> "are clearly questions of general interest. But are they beyond the capacity of the union members to resolve? Do they justify a rather widespread intervention by outsiders?
>
> "Obviously anyone is free to speak his mind on the subject. Yet a larger problem looms when out-

siders volunteer labor, professional services and, most seriously, money . . . To encourage external contributions is to open the way to contributors seeking to buy something other than the well-being of a union or the labor movement.

". . . Whatever the source, money is not usually freely given, and union politicians are no more immune than others to its lure and to its claims.

"Taking the opposite view in these pages recently, Joseph L. Rauh maintained that outside help is the 'only course' that can allow a reform group in a union to prevail. Even if he could prove that assertion, it would not outweigh the case against public intervention in a union's internal politics. And there is good evidence that it is not true. Mr. Abel, the late Walter Renther and Jerry Wurf of the American Federation of State, County and Municipal Employees are among those who overturned stale bureaucracies on the strength of their own appealing efforts.

"The desire to assure the support of Mr. Sadlowski and his powerful union for worthy national causes is understandable. So might be the desire of a George Meany to influence an election for chairman of the Chamber of Commerce. But neither intervention commends itself as an appropriate practice."

Views in accord with the *New York Times*' position were expressed by voices as divergent as the *Wall Street Journal* (Appendix C hereto), George Meany, then President of the AFL-CIO (Appendix D hereto), and Albert Shanker, then and now President of the American Federation of Teachers (Appendix E hereto).

10. The 1978 USWA Convention was the first following the 1977 election, and the first, therefore, in which the subject of "outsider" involvement was a focus of

attention. In advance of every Convention, local unions submit resolutions proposing constitutional changes which they want adopted at that Convention. In advance of the 1978 Convention, resolutions were submitted by 225 local unions urging the adoption of a constitutional provision which would prohibit financial support of candidates for USWA office by persons who were not members of USWA. (Copies of some of these resolutions, which are representative of the substance of all of them, are included in Appendix F hereto). The extent of membership interest and concern over the phenomenon of outsider involvement in USWA's election is perhaps reflected by the fact that only two other constitutional issues generated anything approximating the number of resolutions which were submitted seeking a ban on outsider involvement.

11. The International Executive Board met on September 11-12, 1978, the week prior to the Convention, and voted to submit a recommendation of its own to the Convention that a constitutional provision precluding outsider financial involvement in USWA elections be adopted. Following that vote, I, together with Vice-President Leon Lynch, met at length with USWA's General Counsel, Bernard Kleiman, and members of his legal staff, to develop a concrete detailed proposal which could be submitted to the International Executive Board and the Constitution Committee of the Convention, and if approved by those bodies, to the Convention itself for consideration by the delegates. In the course of those deliberations we examined numerous questions, and the draft which we developed (which ultimately was adopted by the Convention as Article V, Section 27 of the Convention) reflected our proposed resolution of these questions. Among these questions, and our conclusions respecting them, were the following:

(1) Should a ban on "outsider" contributions apply only to International elections (i.e. elections of Interna-

tional Officers, District Directors, and the National Director of Canada), or should it apply as well to elections of local union officers in each of the approximately 5,000 USWA local unions? After some discussion, it seemed more sensible to limit the proposal solely to International elections. Two considerations influenced our thinking:

(a) The demonstrated interest of outsiders thus far had been with respect to USWA's International elections; we were aware of no similar efforts by outsiders to influence the outcome of local union elections; and, confirming this, all of the resolutions which had been received sought a ban on outsider involvement only with respect to Interntaional elections. This corresponded with our own impression that the interest of outsiders was in influencing the conduct of a major International union—at a level which could influence public policy on a national or multi-national level—and that there would be little interest among outsiders in seeking to gain influence over local unions which could not have a substantial effect on national affairs.

(b) From an administrative standpoint, it would be literally thousands of times harder to implement a prohibition on outsider financial support with respect to local union elections than in the case of International elections. There are only 31 offices filled in International elections, and thus the number of candidates whose financial practices would have to be monitored would be relatively limited. On the other hand, there are approximately 5,000 local unions within USWA, each has a number of offices filled by election, and there are frequently two or more candidates for each office. Applying the ban to local union elections thus would require monitoring the financial activities of perhaps 100,000 candidates, an extraordinary administrative undertaking.

On balance, given the absence of past outsiders' involvement in local union elections, and the unlikelihood that such involvement would develop in the future, we

concluded that extending the ban on outsider involvement to local union elections was not warranted in light of the enormous administrative costs and burdens which would be entailed.

(2) A second question which we considered was whether to make an exception from the ban on outsider contributions for relatives and/or friends. On the one hand, the concerns which had prompted the outpouring of union member sentiment for adoption of the ban related to those outsiders who wished to influence the future course of the union's policies and practices for their own interest, and relatives and close personal friends who contributed to candidates for personal reasons were unlikely to pose a threat to USWA's interests. On the other hand, as we thought the problem through more carefully, we recognized that such an exception would create a potential "loophole" which could be used to undermine the purposes of the rule entirely. For it would be impossible to ascertain the sources of the monies which relatives or friends might donate to candidates, and thus relatives and friends could be the recipients of contributions from total outsiders, transmit those contributions to candidates, and thus undermine the purposes of the rule. It would be administratively impossible for the union to regulate or monitor this, for USWA has no power to command compliance with its rules on the parts of relatives and friends who are not USWA members. Moreover, an exception for "friends" would be open-ended: anybody willing to contribute to a candidate—whether or not a friend before—undoubtedly would be thought to be a "friend" when he offered to contribute. On balance, we concluded that the only way to make a ban on outsider contributions viable was to make the ban absolute, and to allow no exceptions.

(3) A third question which we considered at length related to the tribunal which would administer the ban on outsider contributions. The administrative responsi-

bility and power was going to be formidable: there would be reporting provisions, there would be a need for interpretations and applications of the rules to particular situations, and, ultimately, there would be the power to impose sanctions upon those candidates who did not obey the rules. Upon reflection, we concluded that the administrative body should consist of persons who were not themselves members of USWA, and who did not have an interest in the outcome of the election; otherwise, if USWA members were selected to administer the rules, there might be claims of partiality in the administration of the rules. We concluded, accordingly, that the rules should be administered by a Campaign Contribution Administrative Committee ("CCAC") which would consist of three distinguished persons having no connection with USWA and thus no potential personal interest in the outcome of the election.

(4) Finally, it was apparent that, in addition to the general principles which should be contained in the Constitution itself, and which would be immutable (i.e. once adopted, not subject to change until the next Convention), there would be a need for regulations of a more detailed nature to implement the broad commands of the constitutional provision. As to these details, we wanted to leave flexibility, should experience in the administration of the new provision suggest changes or improvements. Accordingly, we determined that regulations to administer the Constitution should be adopted by the Executive Board, subject to change if the Executive Board determined that changes were appropriate, or if the CCAC itself recommended such changes based upon its experience in administering the provision. Appropriate language was inserted in our draft of Section 27 authorizing the Executive Board to adopt regulations to implement the provision, and authorizing the CCAC to recommend additions or amendments to those regulations. We further determined that it would be desirable for the Executive Board to adopt its regulations in advance of the

Convention, so that in voting on the Constitutional provision the delegates would be aware of the regulations which would be used to implement it. We therefore drafted regulations for the Executive Board's consideration.

12. I should note one other consideration which went into our drafting which might not be self-evident from reading Article V, Section 27. The creation in USWA's Constitution of a committee of persons outside USWA to administer a portion of its election rules would be an evolutionary step for USWA. We recognized that if the Convention approved our proposal to create such a Committee, it might be desirable to extend the authority of that Committee to encompass administration of other election rules in addition to the ban on outsider contributions. We were reluctant to propose a broader jurisdiction at that time, however, preferring to await the appointment of a Committee so that we could discuss with the Committee members the feasibility of their assuming a broader jurisdiction. To provide the Constitutional basis for such a later broadening of the Committee's jurisdiction, we inserted a provision in Article V, Section 27(f), authorizing the International Executive Board to confer power upon the CCAC to implement "any other Section of Article V" (i.e. any other aspect of USWA's election rules). (In fact, it is likely that the CCAC's jurisdiction *will* be expanded. For example, at the CCAC's first meeting, USWA discussed with the CCAC's members the feasibility of their assuming jurisdiction to enforce USWA's ban on the use of union monies and facilities to support candidacy. The Committee members preliminarily indicated that they thought they could feasibly handle this additional responsibility, and if they confirm this, the International officers will recommend that the International Executive Board confer that power upon the CCAC.)

13. When our draft was completed, we submitted it to the International Executive Board, which met again

on September 20, 1977. After extensive discussions, the meeting culminated in the adoption of a motion by the Board that the proposed Constitutional amendment be recommended for adoption by the Convention, and that the regulations be adopted contingently and made available to the delegates for their information prior to their voting upon whether to adopt the Constitutional amendment.

14. The next step in the consideration of the proposed Constitutional amendment was its submission to the Constitution Committee of the Convention, which was composed of 76 delegates to the Convention. The approval of this Committee is necessary for a proposal to be brought before the entire Convention. The provisions of our proposal were discussed extensively, and the choices we had made on the more difficult items, described above, were explained and debated by the members of the Committee. While there was not unanimity among all members of the Committee on the desirability of adopting a ban on outsider contributions, nor with respect to the particular choices we had made on the more difficult items, the overwhelming majority of the Committee members approved both the adoption of an amendment banning outsider contributions, the choices we had proposed with respect to the difficult items, and the full text which we had drafted. Accordingly, the Committee voted to propose to the Convention adoption of Article V, Section 27 as drafted.

15. The Convention had convened on September 18, 1978, and its deliberations lasted five days. There were, all told, 4,227 delegates. The Convention proceedings are transcribed verbatim, and are later published in a volume widely distributed within the Union. A copy of the pertinent portions of the Convention proceedings is attached as Appendix G hereto. The proposal to adopt Article V, Section 27 was considered on the fourth day, September 21. However, there was one statement made

on the first day of the Convention which is perhaps relevant "legislative history", and which I will note first. Traditionally, the President of the Union makes a "keynote address" on the first day of the Convention. This was the first convention following Lloyd McBride's election as President of USWA, and at the outset of his keynote address, which was otherwise devoted to substantive issues confronting the union (such as collective bargaining plans, the impact of steel imports, etc.) he made a brief statement regarding the election and the phenomenon of outsider involvement which first surfaced therein. With respect to the latter, he emphasized the "hazard" proposed by outsider contributions—that "persons who would be elected in our election would be indebted to people and organizations other than you, the membership and the union itself." The keynote address appears at pages 5-20 of the published Convention proceedings, and the reference to outsiders is at page 6.

16. There were no further statements pertinent to the "outsider issue until Article V, Section 27 came before the Convention for consideration. The debate appears at pages 237-253 of the Convention's proceedings (Appendix G). Proponents urged its adoption to eliminate the threat that outsiders could obtain influence over the affairs of the union by financing candidates who would then be beholden to them. At the conclusion of that debate, the motion to adopt Article V, Section 27 was approved by a standing vote. The approval of Article V, Section 27 was overwhelming; I would estimate that it carried by a margin of approximately 10-1. A procedure exists under USWA's rules whereby delegates who feel strongly about their opposition to action taken by the Convention can specifically record their "no" votes in the published record of the convention. This opportunity is taken seriously; for example, on another, unrelated Convention action, 149 delegates specifically recorded their opposition (see pp. 493-495; Appendix G). With respect to Article V, Section 27, however, only nine delegates (all representing a

single local union) felt strongly enough to specifically record their opposition (see p. 492 of Appendix G).

17. Following the Convention approval of Article V, Section 27, we set about finding appropriate prominent citizens to serve on the CCAC. It was our objective to find persons of such prominence, independence of judgment, and integrity, that all members of the union could be confident that Article V, Section 27 would be administered wisely and without favoritism. I believe that the persons who were selected, and who have agreed to serve on the CCAC, fully meet those qualifications.

The Chairman of the CCAC is W. Willard Wirtz, who was Secretary of Labor of the United States from 1963 to 1969. He has held a number of public offices, was a Professor of Law at Northwestern University for many years, and, since the completion of his services as Secretary of Labor in 1969, has been in private practice in Washington, D.C.

The other two members of the CCAC are David Lewis, an attorney in Canada, and Eric W. Springer, an attorney in Pittsburg, Pa.

Mr. Lewis was a member of the Canadian Parliament from 1962-1963 and from 1965 through 1975. From 1962 until 1971, Mr. Lewis was Deputy Leader of the New Democratic Party in the Canadian Parliament. In April 1971 he was elected Federal Leader of the New Democratic Party, and held that post until his retirement from Parliament in 1975. For the last four years, Mr. Lewis has been Research Professor with the Institute of Canadian Studies and the Department of Political Sciences at Carleton University in Ottawa.

Mr. Springer, an attorney, was Director of Compliance of the Equal Employment Opportunity Commission in 1967, served as Chairman of the Commission on Human Relations of the City of Pittsburg, Pa. and is now in pri-

vate practice in Pittsburg specializing in health and hospital law.

None of the three members of the Committee has now, or has had in the recent past, any connection with USWA, apart from his service on the CCAC. Mr. Lewis, prior to his re-election to Parliament in 1965, represented USWA in his law practice in Canada, but has not represented USWA since that time.

18. USWA has a long history of hotly-contested democratic elections. In U.S.W.A.'s 1965 election, the incumbent President and Vice-President of USWA both were defeated in their bids for re-election. In the next election, in 1969, the incumbent President defeated his opponent (an employee of the headquarters staff) by a 58-42 percent margin, but in six of the eleven contested races for District Director the incumbent or candidate supported by the President was defeated. Following the next election, in 1973, USWA's 28-member International Executive Board included 17 who had gotten into office by defeating an incumbent or who had opposed the election of the then-incumbent top officers of USWA. In the 1977 election, McBride defeated Sadlowski for President by a 57-43 percent margin (the vote was 328,861 to 249,281), three incumbent District Directors were defeated by staff representatives, and at least two other candidates were elected to District Director positions on platforms openly critical of USWA's top officers. All told, USWA has had innumerable contested races for International office (including District Director) since the LMRDA became effective in 1959. This democratic tradition applies as well to USWA's contests for local union office. In the 1973 local union elections, for example, there was a 33% turnover in local union presidents, and a 49% turnover in local union vice-presidents.

19. Attached as Appendix H is a letter written by Edward Sadlowski, Jr, eight months after the 1977 election for President of USWA. In the letter, Sadlowski

stated his belief "that the United Steelworkers of America is the finest, most Democratic, most honest, and responsive Union in the United States.

20. Article V, Section 27 of the USWA Constitution, as adopted at the 1978 Convention, is self-implementing. It does not require the approval of the United States Department of Labor, nor of any other governmental agency. USWA has not sought any such approval, nor, to our knowledge, has the Department of Labor or any other governmental agency expressed any view regarding the lawfulness of Article V, Section 27.

[Signature Omitted in Printing]

The New York Times January 17, 1977

OUTSIDERS' ASSISTANCE IN UNION ELECTIONS

[Photo Omited in Printing]

By Joseph L. Rauh Jr.

WASHINGTON—The resolution of a question now being raised by president I. W. Able and the "official family" of the United Steelworkers in their efforts to repel the challenge of Ed Sadlowski and his reform group may prove to be as important to the future of trade-union democracy as the outcome of the union's presidential election itself.

The question is this: Should persons not connected with the labor movement be permitted to contribute and otherwise assist in a union election? Able says no, So do George Meany, president of the A.F.L.-C.I.O., Albert Shanker, president of the United Federation of Teachers, and even so public-minded a union leader as Murray Finley, president of the Amalgamated Clothing and Textile Workers Union.

But without support from the public—financial contributors, volunteer workers, public-interest lawyers—the challenger to the union hierarchy would never have a chance.

Tony Boyle would be president of the United Mine Workers today, instead of a lifelong resident of a Pennsylvania prison, if the public—what Boyle and Able and Meany and Shanker and Finley call "outsiders"—had not rallied to the support of the reform group.

For the challenger is almost always, as in the case of Sadlowski, a man with no personal financial means. The

incumbent or the incumbent's hand-selected candidate has his compaign built in for him. The staff representatives in the Steelworkers Union, as in most unions, are hired, directed and controlled by the union president; practically all of the Steelworkers' 800 staff representatives are working for the official candidate. Lloyd McBride. They contribute to his campaign what they are asked. They press the local union to which they are assigned to nominnate and support McBride. At a recent Labor Department meeting on the upcoming election, a local union president blurted out that "there will never be a fair Steelworkers' election until they lock up all the staff representatives."

Short of so drastic a remedy, building an outside counterforce to provide funds and assistance to the rank-and-file challengers is the only course that offers even the possibility of the reform group prevailing.

In their effort to bar public support for Sadlowski the McBride forces have raised the specter of employers unlawfully contributing to the Sadlowski campaign. This has its amusing aspects, of course, for the large steel and other corporations have not hidden their distaste for Sadlowski. But there is also a serious side to the issue —who, or what, is an "employer?"

While Sadlowski appeals to the general public for funds he has instructed his staff to reject any check or other contribution from a corporation or business entity, in the unlikely event that one should show up. Additionally, although the law does not require this, Sadlowski has also told his staff to reject contributions from certain individuals (officers, major stockholders) of companies doing any bargaining with the union, in the unlikely event that such a contribution showed up.

But this is not enough for those who want a total exclusion of the public from union elections; they want the word "employer" defined in the broadest and most un-

limited manner possible, perhaps even treating as a forbidden contributor anyone who employs a maid, laundress or babysitter.

Since the term "employer," so defined, encompasses the entire public able to make a financial contribution toward a public-interest struggle of this kind, such an interpretation would effectively bar the public from participating in any way, shape or form in a union-reform election, and the incumbent hierarchy of any union would be self-perpetuating.

So the issue is clearly drawn: Do persons outside the trade-union movement have a sufficient interest in the outcome of union elections to warrant their participation as personal and noninstitutional contributors, volunteer workers, legal counsel, or otherwise?

The answer seems self-evident: the trade-union movement is not an island unto itself, the only major force beyond public influence. The manner of operation of labor unions, the presence or absence of democratic union processes, and the decisions reached by the elected officials all vitally affect the public interest.

Indeed, this has been recognized in Federal legislation; thus, the great growth of the trade-union movement in the 1930's and thereafter was accelerated by supportive Federal legislation such as the Norris-LaGuardia and Wagner Acts.

The suggestion that the public has no interest in the next president of the Steelworkers Union with its 1.4 million members and its tremendous national responsibilities flies in the face of history and current experience.

Joseph L. Rauh Jr., a Washington attorney, is serving without fee to Ed Sadlowski, insurgent candidate for president of the United Steelworkers.

The New York Times, February 4, 1977

UNION FUNDS FOR UNION POLITICS

The campaign for a new president of the United Steelworkers of America has acquired some of the characteristics of a public election, complete with tours, outside volunteers, big-name fund-raisers and free-flowing publicity. The contest, between Lloyd McBride, regarded as the candidate of the union hierarchy, and Ed Sadlowski, billed as the challenging young reformer, has been defined in some liberal circles as not only an internal union matter but also one of urgent public interest.

No doubt it is. The policies of the steel union, with 1.4 million members, are crucial to an industry whose health, in turn, is crucial to the economy. Mr. McBride would extend the Experimental Negotiating Agreement, devised by the retiring president, I. W. Abel in 1973. That constructive understanding calls for arbitration instead of strikes whenever differences cannot be resolved in collective bargaining. The idea has been a major issue in the union's campaign.

Mr. Sadlowski contends that the agreement surrendered "labor's muscle, our only weapon," though he does not deny that union members have done rather well under it. Average earnings in basic steel have gone up 46 percent since the agreement went into effect, compared with 38 percent in the auto industry. But he is now more concerned with the quality of working life, safety on the job, union democracy and general social issues.

These are clearly questions of general interest. But are they beyond the capacity of the union members to re-

solve? Do they justify a rather widespread intervention by outsiders?

Obviously anyone is free to speak his mind on the subject. Yet a larger problem looms when outsiders volunteer labor, professional services and, most seriously, money. Sizeable contributions by other unions, such as Mr. McBride has been receiving, are questionable enough. Although perfectly legal, they may create an inequity; but they do at least come from within the labor movement. Contributions from non-union sources raise a considerably greater threat, even one of corruption. This is by no means intended to suggest anything sinister in the current Steelworkers' campaign; only that it raises the larger principle at stake. To encourage external contributions is to open the way to contributors seeking to buy something other than the well-being of a union or of the labor movement.

The Landrum-Griffin Act forbids employers to contribute to a union election campaign. But there is nothing to prevent, for instance, outside industrialists from helping a favored candidate in more subtle ways than outsiders are now helping Mr. Sadlowski. Mr. McBride charges his opponent with having accepted $2,000 from a large corporation. Whatever the source, money is not usually freely given, and union politicians are no more immune than others to its lure and to its claims.

Taking the opposite view in these pages recently, Joseph L. Rauh maintained that outside help is the "only course" that can allow a reform group in a union to prevail. Even if he could prove that assertion, it would not outweigh the case against public intervention in a union's internal politics. And there is good evidence that it is not true. Mr. Abel, the late Walter Reuther and Jerry Wurf of the American Federation of State, County and Municipal Employees are among those who over-

turned stale bureaucracies on the strength of their own appealing efforts.

The desire to assure the support of Mr. Sadlowski and his powerful union for worthy national causes is understandable. So might be the desire of a George Meany to influence an election for chairman of the Chamber of Commerce. But neither intervention commands itself as an appropriate practice.

Wall Street Journal (Editorial) 9-21-78

REVIEW & OUTLOOK

FOUNDATION DEMOCRACY

Last year I. W. Abel retired after 12 years as president of the United Steelworkers of America, and the union held an election to choose his successor. Mr. Abel endorsed Lloyd McBride, a veteran of 40 years' work in the union. The opposition was Edward Sadlowski, running with a good deal of outside money and with the aim of "restructuring the whole goddamned system." Mr. McBride won the election. But now the union is suing to stop the kind of outside participation that made the Sadlowski insurgency possible in the first place.

Mr. McBride's financial support in the election came from union sources: a large amount from union staff and some donations from outside labor leaders. Such are the advantages of incumbency—though they haven't prevented the steelworkers from enjoying some pretty hotly contested elections in the past. But Mr. Sadlowski was getting money and help from more unorthodox places—from the likes of Richard Goodwin, Joseph Rauh and John K. Galbraith, people who wanted to use the election "to turn the American labor movement around and make it into the democratic progressive political and economic force its founders intended it to be."

Some of this help came from tax-exempt foundations like the Rockefeller Family Fund, the J. M. Kaplan Fund and such, which turned money over to a group called the Association for Union Democracy, presumably devoted

to nonpartisan objectives like insuring fair and open elections in unions such as the USW.

But, says the union, virtually the whole AUD budget went to pay for promoting the Sadlowski slate. The election day observers that AUD trained bore credentials identifying them as Sadlowski campaign with legal, administrative and communications services. Officers and board members of the foundations providing the money for all this showed their plainly partisan intent by making their own personal contributions to the Sadlowski slate.

So the union filed suit against the foundations. It contends the foundations violated the Landrum-Griffin Act which bars employers from putting money into union elections. The foundations, the suit argues, are employers within the meaning of the act; in fact they own substantial stock in companies employing steelworkers.

The foundations for their part say the USW has no standing to sue, so the court is now deciding whether the union can proceed with its case. We hope it gets the go-ahead. True, it's a little hard to accept the picture the union has painted of an employer class carrying on its long-standing campaign against American labor by using the foundations as agents. Things just aren't that good for management these days; and anyway, we suspect few corporate managements would have any great affection for Mr. Sadlowski.

Still, the union's charge does get at the serious issue this case raises: Who's really behind a political campaign like this one?

The Sadlowski campaign drew on a network of resources and personal contacts, in government and outside it, that's by now a rather well established feature of American politics. To take one example, the Labor Department says that one of the foundations putting money into the steelworkers' election was the tax-exempt Youth

Project. The list of Youth Project grants reads like an encyclopedia of 1970s counter-culture causes, with everything from the Atlantic Consumer Advocacy Project to the Hawaiian Coalition for Native Claims. Its director, a veteran of the Indochina Peace Campaign, became a top Sadlowski aide. She later set out to become Sam Brown's deputy at VISTA, which dispenses government money.

There's nothing unusual about the existence of such connections in politics. But a little more disclosure and accountability might be in order. Whatever the technicalities of the law, it's clear that the people who financed the Sadlowski insurgency obviously had something on their minds beyond getting the best deal for the steelworkers, and it's encouraging to see the union fighting back.

AFL-CIO News, Washington, D.C., January 15, 1977, Page Seven

MEANY HITS OUTSIDERS ON STEEL ELECTION FUNDS

AFL-CIO President George Meany declared that raising funds from outside the trade union movement to finance a union election is "unethical" and "can rob union members of their rights to an election free of influence from employers and other outsiders."

Meany's comment came in support of Steelworkers President I. W. Abel in the current election campaign in the steel union for a new president and other officers. Abel is retiring at the end of his term in May.

Abel has condemned fund-raising by presidential candidate Edward Sadlowski, director of the union's District 31, from employers outside the steel industry and others "outside the union and outside the labor movement." A suit has been filed by Sadlowski's opponent, Lloyd McBride, director of the union's District 34, charging that such fund-raising violates the union's constitution.

Meany said he had never uttered an opinion about any election in any constituent union of the AFL-CIO but that events in the Steelworkers election "make it impossible for me to remain silent at this time."

"Many people completely outside the labor movement—businessmen, academics and professional people—are being actively solicited by mail for funds for one candidate in that election," Meany said. "In addition, cocktail parties which have attracted businessmen and so-called limousine liberals have been held in many cities to solicit outside money for that candidate."

He pointed out that "three solicitors of this outside money—John K. Gailbraith, a retired Harvard economics professor, Joseph Rauh, a Washington lawyer, and Victor Reuther, who has never had any connection with the Steelworkers union—have also engaged in unrestrained attacks on the present officers of the union and on the AFL-CIO."

Meany added that "it is deeply disturbing that democratic unions, which had to fight so many legal and legislative obstacles for so many years to free themselves from outside domination, once again face an effort to control their policies and program by monied interests outside the union."

He urged all Steelworkers to study the candidates and issues and vote on election day, Feb. 8, to name the leaders of "one of the finest unions in America."

Meany's views were strongly affirmed by A. Philip Randolph, a retired vice president of the AFL-CIO and dean of America's black labor leaders. He said the Steelworkers' union under Abel is "second to none in advancing racial and economic equality" and warned of "outside elements" who will seek to control the union's policies.

In Pittsburgh, the Steelworkers announced that under the union's nominating procedures in which local unions nominated candidates between Nov. 8 and Dec. 10, 1976, McBride received 2,901 nominations to 521 for Sadlowski. Similar margins were reported for the candidates for secretary, treasurer and two vice presidents on each slate. There are election contests as well in 15 of the union's 38 districts.

The New York Times, December 26, 1976

WHERE WE STAND

by Albert Shanker

President, United Federation of Teachers

Steelworker Election

New Danger to Union Democracy

One of the basic rights enjoyed by American workers is in great danger. That is the right to be represented by a union *of their own choice* or, if the majority so desire, to be represented by no union at all.

This most basic labor right has had a stormy history. For much of our history, when workers did join a union, bargained collectively and occasionally went on strike—the courts ruled that their union solidarity was a "conspiracy" against property.

When workers finally succeeded in getting laws protecting these rights, they faced another problem—the effort by many employers to influence, dominate and control the unions of their employees. In some cases employer control was assured through the support of a separate company union, in other cases through control of the existing union, but the results were the same. This domination of unions by employers was eventually outlawed through specific provisions of law and a body of rulings of the National Labor Relations Board, as well as most state labor boards.

In the 1950's, congressional inquiries found still further obstacles to employees being represented by organizations of their own choosing that were responsive to their interests rather than to some other group. A few unions and their leaders were found to be involved in

financial dealings with employers and outside interests. Some of these dealings were illegal, but even many which were legal raised serious questions as to whether these unions and their leaders acted in the interests of the members or of their own financial empires.

Still another problem arose. Some unions did not have free, fair and democratic election procedures. Even though these abuses were found only in a small part of the union movement, the Landrum-Griffin Law was enacted which tightened up the financial transactions of unions and their officials, required financial reports and mandated democratic election procedures. Thus, employees could have unions of their own and they could elect leadership which would have to be responsive to them.

Now there is a new threat to workers being represented by unions *of their own.* An election for the presidency of the 1.4 million member United Steelworkers of America will take place Feb. 8. Incumbent President I. W. Abel is not in the race because the union constitution requires mandatory retirement after age 65. The candidates for the Steelworkers presidency are Lloyd McBride, a member of the I. W. Abel team, and Edward Sadlowski.

This is not just another union election. When the votes are all counted, there is a serious question as to whether the United Steelworkers of America will have a president who has been chosen by the workers themselves or one who has really been put in office by the money and publicity of wealthy tax-exempt foundations. Harvard professors, radical chic movie stars, anti-union employers in other industries, leaders of the left wing of the Democratic Party, and newspapers and TV stations which have had strong anti-union histories.

Reaching 1.4 million members and providing watchers at 7,000 polling places across the country (and in Canada) is a huge undertaking. A candidate who finances

his campaign through contributions from union members is likely to be responsive to those members after election. But one who gets a big boost from outside sources will have to respond to others beyond the union.

So far, Sadlowski has received massive amounts of outside support.

- A full one-hour TV show—shown nationwide a number of times—was financed with foundation money. Presenting only Sadlowski's side of the story, it was more like a paid ad than a documentary.

- A major section of "60 Minutes"—again more a commercial than a news report—went into the homes of most union members through TV. This program in the past, has featured attacks on the unemployment insurance system and other worker benefits.

- Harvard Professor J. K. Galbraith has sent thousands of letters to nonunionists across the country asking for money for Sadlowski. The appeal seeks contributions for a group called "Steelworkers Fight Back," but all three signers are non-steelworkers.

- Wealthy industrialist Howard Samuels, who was opposed to unionization in his own shop, is among the employers who have made contributions to Sadlowski.

- On the West Coast, Jane Fonda organized an event to collect funds for Sadlowski. In the East, Ossie Davis did the same.

- Democratic party politicos Ted Sorensen and Richard Goodwin are working in the Sadlowski campaign.

- Newspapers across the country usually hostile to unions and their leaders have treated Sadlowski more favorably than almost any other union leaders in recent memory.

At one time it was thought that the boss was the only outsider who had an interest in trying to control the

affairs of the union. Obviously that is wrong. Some outsiders want to control the election because they want the union to take their positions on foreign policy and defense. Small extremist groups have often had the same goal. Political figures want to influence the union presidency so that in the future the union will help them get their choice for the U.S. presidency. One thing is certain: not one of these outside groups really cares about the wages, hours, working conditions or job security—the basic economy interests—of the steelworkers. The outsiders have their own agendas.

Recently, Murray Finley, president of the Amalgamated Clothing and Textile Workers Union, gave his personal contribution to McBride, as did members of his executive board. In a statement explaining his stand and the unique situation it represents, Finley declared: "I went in because I resented the intrusion of outsiders into the labor movement. If the Reuthers, the Galbraiths and the Ted Sorensens can do it, so can the Communists, the Mafia, activists, anyone with money and an organization. That's why I went to my executive board for individual donations for McBride."

Labor unions have successfully fought off attempts to control the union by bosses, communists, corrupt and/or undemocratic union officials. In certain situations where there have been charges of corruption and even murder, the general public has a legitimate interest in rooting out the evil. But *there have been no such charges* about the current Steelworker leadership, which the McBride candidacy represents. In other situations, where a union is organizing unrepresented workers in an attempt to obtain elementary justice for them—as in the case of the United Farm Workers—public figures have supported such organizing efforts in the name of decency, but they have been *asked to do so* by the labor movement. No such issue presents itself here; the steelworkers have been well organized and ably represented. Justice in the workplace

is not the issue. Yet never before has there been as much outside money, manpower and media promotion. When it is all over, will the workers have a union which represents them—or will they have a leadership which uses the power of the workers to advance the interests of the outsiders who have elected it?

Mr. Shanker's comments appear in this section every Sunday. Reader correspondence is invited. Address your letters to Mr. Shanker at UFT. This column is sponsored as paid advertising by the United Federation of Teachers, Local 2, American Federation of Teachers, AFL-CIO, 260 Park Avenue South, New York, N.Y. 10010. © 1976 bzy Albert Shanker.

WILLIAMS—APPENDIX F

July 24, 1978

WHEREAS, In the recent Election for International Officers and District Director, outside sources became involved financially in the campaigns; and

WHEREAS, Corporations, by way of non-profit funds, were making back door contributions to candidates for office; and

WHEREAS, Those contributions could have been destructive influences to our Great Union:

THEREFORE, BE IT RESOLVED THAT: The Constitution of our Union be amended to provide that any candidate for office who accepts or seeks assistance from any of these sources, whether financial or otherwise, be disqualified from running for office.

Submitted by Local Union 1185, District 23, USWA

[Signatures Omitted in Printing]

ELECTION OF INTERNATIONAL UNION OFFICERS & EXECUTIVE BOARD MEMBERS

WHEREAS: It is apparent that in our last election of International Officers and Executive Board Members individuals and groups outside of our Union attempted to influence the outcome of our election by contributing money, distributing material, furnishing valuable services, etc. in behalf of candidates for these offices, and

WHEREAS: The provisions of our Constitution do not provide adequate rules requiring the reporting of such activities or prohibiting them, and

WHEREAS: It is imperative to the welfare of our Union and its membership that the election of International Officers and Executive Board Members should be a process that permits the participation of Union members only.

NOW THEREFORE BE IT RESOLVED: Local Union 3832 this 16 day of Aug., 1978 recommends that the 19th Constitutional Convention of the United Steelworkers of America make the necessary changes in our Constitution to:

(1) Prohibit the interference or participation of non-members in our election process.

(2) Requires reporting by all candidates for such offices of all monies and services in behalf of their campaign, and

(3) Requires the disqualification of any candidate for such offices who solicits or accepts contributions of money or services from non-members of our Union.

[Signatures Omitted in Printing]

WHEREAS conventional attempts by employers and employer organizations over the years to destroy our Union have failed, and

WHEREAS we have now seen new approaches during the last election by employers and employer organizations to destroy our Union by attempting to seize control of our Union by supplying substantial financial backing to candidates for International Office,

BE IT THEREFORE RESOLVED that this Convention provide for changes in our Constitution which will prohibit funds being made available to candidates, from sources outside of the labour movement.

/s/ [Illegible]
President

/s/ [Illegible]
Recording Secretary

[SEAL]

Local Union [Illegible]

Date [Illegible]

PROCEEDINGS

of the

NINETEENTH CONSTITUTIONAL CONVENTION

of the

UNITED STEELWORKERS OF AMERICA
AFL-CIO • CLC

[LABEL]

Atlantic City, New Jersey
September 18-22, 1978

* * * *

KEYNOTE ADDRESS

Lloyd McBride, International President
United Steelworkers of America

Thank you, Paul, for your generous introduction and thank all of you for your most kind and generous reception.

Reverend clergy, my fellow officers, members of the International Executive Board, sister and brother delegates, distinguished guests, ladies and gentlemen: A warm and fraternal welcome to this 19th Constitutional Convention of the United Steelworkers of America.

The beginning of this Constitutional Convention marks another milestone in the long and proud history of our union—a union that we all agree stands as one of the most progressive and democratic unions in our two countries! Our accomplishments on behalf of our members and our communities have been impressive and have brought our members from lives of desperation and fear to lives in which the words dignity and security have real meaning.

Let me state at the outset of these remarks to you today that I am indeed greatly honored and privileged to address you as the president of our union. This is the first time that the honor has been mine, and it is my hope that this week will be a productive one as we go about the business of charting our course for the next two years.

My fellow officers and I are comparative newcomers to international office, having now been in office since June 1 of last year when were were elected in the largest referendum election conducted by any trade union in North America. We were chosen as your officers by substantial margins and in the most supervised election in our union's history. If any more government people had

been involved in our election, the government would have had to build another federal building downtown Pittsburgh.

You may recall that we had asked the Department of Labor for the "maximum possible assistance," and that the department said later that the technical assistance it provided exceeded the pre-election assistance it had provided any union since passage of the Landrum-Griffin Act in 1959. In any event, subsequent developments demonstrated that once again we know how to conduct honest and democratic elections that accurately reflect the wishes of the membership. We are proud of our democratic heritage. We are proud that we are one of the few unions that elects its officers by secret ballot, rank-and-file vote. And we will continue to elect our officers by secret ballot, rank-and-file voting! And we will continue to do so without any interference by outsiders, or interlopers from the campuses or Hollywood or the foundations.

The election by referendum vote by a union as large as ours carries with it certain hazards which were experienced last time around. I refer now to the interest in our affairs by a variety of organizations and individuals all of which felt called upon to try to influence the elections of your international officers and leaders. The record is replete with names, activity, amounts contributed and evidence of collusion between organizations and individuals to the end that persons who would be elected in our election would be indebted to people and organizations other than you, the membership and the union itself.

Of course, this is of grave concern to everyone whose commitment to the union is great enough to supersede their interest in such organizations as the Socialist Workers Party, the Communist Party, the Rockefeller Family Fund, other funds of various descriptions, cor-

porate officials, employers, pseudo-liberals, and other various and sundry organizations.

My own feeling is that there is no room for such divided loyalties and that there is no community of interest between such organizations and the United Steelworkers of America.

When my fellow officers and I went to our members during the campaign, we did not equivocate and we have not equivocated since our election. We stated our positions and intentions clearly in the campaign and we have continued to do so since assuming office.

* * * *

Now, probably you'll be gratified that I'm about to come to the end of this long report to you.

In closing, I want to say a few words about the discussions that will take place during this convention. There are going to be differences of opinion expressed as we debate and resolve the issues that come before us. That is how it should be. This is a democratic union. Our democratic procedures have been tested and proven, and have worked since our beginning. They will work this week also.

The decisions this week will be made by the duly elected delegates who are in the hall of this convention and only by duly elected delegates. No one else has any business trying to influence our discussions and no one else will be given that opportunity.

If there is to be criticism, let it be constructive criticism. There are enough people outside the union and the labor movement that are bent on destroying us. There are some—unfortunately—within the union who would prefer chaos to orderly procedure. But these are people who deal with lost causes and who can only suceed if our system fails—if there is no free collective bargain-

ing—if there is no democracy in government or the union. These people we do not need. Extremism of the left or the right has no place in the United Steelworkers of America!

I also say that when the decisions are made this week they will represent the official policy of our union and it is our duty as responsible Steelworkers and trade unionists to support that policy. Not everyone will agree with all of the decisions, but that is democracy.

So let the voices that speak out this week be raised in a constructive spirit—in a spirit of genuine concern for the common good of our union and its members—in a spirit of maintaining our union as a united force for the benefit of the membership of our great union.

I want to thank you for your patience. I'm aware that this was an extremely long report. However, it's now done. We're about to get to the work of the convention. I'm extremely grateful for your patience and your attention. Thank you very much.

(Standing ovation)

In order to get the convention underway, I will ask Secretary Williams to read the names of the Committee on Credentials.

Secretary Williams.

Secretary Williams: Thank you, Mr. President. It is my privilege to present to this convention the names of the members of the Credentials Committee.

CREDENTIALS COMMITTEE

Harry O. Dougherty, Chairman	LU	3592	Dist. 30
Edgar L. Ball, Secretary	LU	3430	Dist. 37
Joseph Horiagon	LU	4633	Dist. 1
Ralph Williams	LU	3670	Dist. 4
George Steinbaugh	LU	13930	Dist. 8
John Schneider	LU	14417	Dist. 9

Milan Milkovich	LU	5707	Dist. 15
Donald E. Bowman	LU	7258	Dist. 15
Joseph F. Carey	LU	8120	Dist. 15
Pat Fagan	LU	5685	Dist. 19
Joseph Ivanusic	LU	8271	Dist. 19
Guido A. Palombo	LU	13102	Dist. 23
Jack McKenna	LU	2790	Dist. 26
Charles G. Canelakes	LU	8680	Dist. 26
Andrew J. Scanlon	LU	13879	Dist. 29
Joe Martin	LU	3124	Dist. 30
Orville Huett	LU	5352	Dist. 30
William Andrews	LU	1010	Dist. 31
Jack Parton	LU	1014	Dist. 31
Frank Guzzo	LU	1033	Dist. 31
Joe Boone	LU	3570	Dist. 31
Donald Larson	LU	1114	Dist. 32
Obert Vattendahl	LU	1744	Dist. 32
Donald Marzec	LU	2090	Dist. 32
Paul Gravedoni	LU	4950	Dist. 33
Leonard Roe	LU	4368	Dist. 34
Ernie Cooper	LU	5783	Dist. 34
John Hood	LU	190-A	Dist. 35
Marco Vestich	LU	7385	Dist. 35
Thomas Duzak	LU	7704	Dist. 35
John Carney	LU	8358	Dist. 35
Glenn A. Chew	LU	14338	Dist. 35
John T. Cook	LU	15120	Dist. 35
William Baugh	LU	4627	Dist. 36
Ben Fischer	LU	8482	Dist. 36
Clarence Darden	LU	12014	Dist. 36
Jerry Helt	LU	7568	Dist. 37
David E. Bennett	LU	392	Dist. 38
Bill Milano	LU	1440	Dist. 38
Manuel L. Sierras	LU	5959	Dist. 38
Elaine Clark	LU	7600	Dist. 38
Dean Clowes	LU	13886	Dist. 38

CONSTITUTION COMMITTEE

Lynn R. Williams, Chairman	LU	8177	Dist. 6
Leon Lynch, Secretary	LU	7928	Dist. 35
H. Len Stevens	LU	4087	Dist. 3

E. Gerard Docquier	LU	8428	Dist. 5
Frank Leseganich	LU	5154	Dist. 26
Frank J. Valenta	LU	7453	Dist. 28
Charles Younglove	LU	211	Dist. 29
James Balanoff	LU	8687	Dist. 31
Robert J. Petris	LU	5876	Dist. 38
Lewis Johnston	LU	4256	Dist. 1
Dod Chadney	LU	5757	Dist. 3
Donald Holtzman	LU	729	Dist. 4
Adam Bambino	LU	4146	Dist. 4
Marion Thurmond	LU	4979	Dist. 4
Len Leyte	LU	5795	Dist. 5
Clement Godbout	LU	7065	Dist. 5
Robert Logan	LU	4509	Dist. 6
Ian K. Levack	LU	4644	Dist. 6
Gaye Lamb	LU	6709	Dist. 6
Ray Poirier	LU	12219	Dist. 6
Ronald G. Varley	LU	14045	Dist. 6
Henry Kline	LU	1940	Dist. 7
Harry Guenther	LU	6017	Dist. 7
Elmer Chatak	LU	7422	Dist. 7
Robert F. Riese	LU	7687	Dist. 7
John M. Rachuba	LU	4727	Dist. 8
Leander Simms	LU	12851	Dist. 8
William Denton	LU	7098	Dist. 9
Milan Bekich	LU	1397	Dist. 15
Thomas Striegel	LU	4579	Dist. 15
Edward Ghearing	LU	14402	Dist. 15
John Czelen	LU	14744	Dist. 15
Randy Akins	LU	8085	Dist. 19
Andrew Koban	LU	8474	Dist. 19
Michael Mazur	LU	15137	Dist. 19
Frank Collins	LU	1605	Dist. 20
Frank Thomas	LU	6980	Dist. 20
George Kurko	LU	1223	Dist. 23
John J. Sheehan	LU	14310	Dist. 23
John T. Smith	LU	1331	Dist. 26
Carl Tisone	LU	7488	Dist. 26

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Paul Brown	LU	1949	Dist. 27
John Sgro	LU	5537	Dist. 27
Hershel B. Donald	LU	7776	Dist. 27
James E. Thomas	LU	3158	Dist. 28
Floyd Chambers	LU	8037	Dist. 29
Douglas Keblbeck	LU	12075	Dist. 29
David Robb	LU	7556	Dist. 30
George Butsika	LU	15535	Dist. 30
Robert Bennett	LU	64	Dist. 31
Roberto Gill	LU	1010	Dist. 31
Ray Mitchell	LU	1011	Dist. 31
Norman Purdue	LU	1011	Dist. 31
William Hesterman	LU	1445	Dist. 31
Carl Alessi	LU	4719	Dist. 31
Ronald Denis	LU	6499	Dist. 32
Eldon Kirsch	LU	2386	Dist. 33
Willard Anderson	LU	2660	Dist. 33
John Cestkowski	LU	5024	Dist. 33
George Becker	LU	1726	Dist. 34
William G. Lincoln	LU	1963	Dist. 34
Harry Tuggle	LU	3572	Dist. 34
Paul Clark	LU	3643	Dist. 34
J. W. Lisk	LU	59	Dist. 35
Robert R. Fohl, Jr.	LU	14401	Dist. 35
Jonathan Comer	LU	6467	Dist. 36
George Trevino	LU	6588	Dist. 36
Rayford Prater	LU	8542	Dist. 36
Sam Camens	LU	13905	Dist. 36
J. Bruce Anderson	LU	6193	Dist. 37
James W. Smith	LU	8159	Dist. 37
Pete Elash	LU	1414	Dist. 38
Al Marnati	LU	2869	Dist. 38
Lloyd Potts	LU	3112	Dist. 38
Maclovio Barraza	LU	6305	Dist. 38
Harry Bridge	LU	14903	Dist. 38

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[Constitution] Committee Secretary Lynch: Thank you, Mr. Chairman.

Article V, New Section 27—Page 41

There were 225 resolutions submitted dealing with outside interference in our international elections.

Ninety-three resolutions would prohibit interference in our election process by non-members, require candidates to disclose their sources of campaign funds and would disqualify candidates who accept contributions from non-members.

Seventy-seven resolutions would bar candidates in international elections from accepting funds from sources outside of the labor movement.

Fifty-five resolutions would disqualify any candidate who seeks or accepts assistance from any source outside of the union.

The committee concurs in the spirit of these 225 resolutions and a similar suggestion from the International Executive Board and recommends the adoption of a new Section 27 to read as follows:

> "Sec. 27. No candidate (including a prospective candidate) for any position set forth in Article IV, Section 1, and supporter of a candidate may solicit or accept financial support, or any other direct or indirect support of any kind (except an individual's own volunteered personal time) from any non-member. For purposes of this Section, the term non-member means any person who is either not eligible for membership under Article III or not in good standing or any foundation, corporation or other entity whose funds are derived in whole or in part in good standing.
>
> "The International Executive Board shall adopt regulations, for incorporation into the International Union Elections Manual, as necessary to implement this provision and to assure conformity with the obligations prescribed in this Section. Such regulations shall include requirements for reporting by candidates and their supporters of information pertinent to administration of and compliance with this Section, with such frequency, not to exceed weekly,

as the International Executive Board deems appropriate.

"There is hereby created a Campaign Contribution Administrative Committee to administer and enforce this Section. This Committee shall consist of three persons, appointed by the International Executive Board, for a term to begin not later than May 1, 1979, and end on August 1, 1983, who shall be distinguished, impartial citizens who are not members of the International Union. If a Committee member dies or resigns, the International Executive Board shall appoint a replacement. A quorum shall consist of two members of the Committee. The International President shall fix the compensation and expenses of the Committee members, and shall arrange for the provision of supplies, services, and all other assistance required by the Committee. The Committee shall have the following powers:

"(a) The Committee shall have the authority to contact any and all non-members who it feels may be providing, or attempting to provide, prohibited support to any candidate, and attempt by persuasion to convince such non-members to refrain from providing such support.

"(b) The Committee shall have the power (i) to direct any candidate, or any supporter, to cease and desist from any course of conduct which the Commitee believes breaches this Section or the regulations of the International Executive Board adopted pursuant to this Section, and (ii) to direct any candidate, supporter or non-member to take such corrective action as the Committee deems appropriate to cure the effects of any violation and/or assure that any improper conduct will not have an effect upon the election.

"(c) The Committee shall receive and promptly review the information candidates and their sup-

porters are required to file by the regulations of the International Executive Board and by such additional requirements as the Committee may establish. The Committee may require candidates and their supporters to report whatever additional information the Committee deems appropriate to perform its functions.

"(d) In the event that a candidate, or a supporter of a candidate with that candidate's knowledge or acquiescence, willfully and substantially breaches the obligations prescribed in this Section, or the regulations adopted by the International Executive Board pursuant to this Section, the Committee shall, upon notice and hearing under such expedited conditions as the Committee deems appropriate in the circumstances, have the power to declare such candidate disqualified, and to so notify the International Tellers.

"(e) If the Committee in its sole discretion determines that legal proceedings are necessary for the enforcement of this Section 27, it may institute whatever legal proceedings it deems appropriate, in the name of the International Union. The Committee shall be the only party authorized to institute legal proceedings to enforce the provisions of this Section 27.

"(f) The Committee may recommend to the International Executive Board that additions or amendments be made to the regulations adopted by the International Executive Board pursuant to this Section and shall have such other powers as the international Executive Board determines are necessary for the implementation of this Section or, if the International Executive Board deems it advisable, any other Section of Article V.

"Any member who believes that another member is violating these provisions may file a complaint

with the Committee. The Committee shall process that complaint in such manner as it deems appropriate, and may adopt rules with respect to the filing and processing of member complaints.

"With respect to the administration of this Section 27, decisions of the Committee shall be final and binding, and not subject to review by any tribunal within the Union."

Committee Secretary Lynch: That completes the portion that will go into the constitution, if approved.

ARTICLE V, SECTION 27, REGULATIONS

Pursuant to Article V, Section 27 of the International Constitution, the International Executive Board adopts the following regulations to govern the conduct of candidates and their supporters (including persons attempting to support candidates) with respect to all elections conducted subsequent to the adoption of Article V, Section 27 for the following positions in the International Union: President, Secretary, Treasurer, Vice-President (Administration), Vice-President (Human Affairs), National Director of Canada, and District Director.

These regulations are not intended to be all encompassing, but are intended to provide some elaboration on Article V, Section 27. These regulations apply to solicitation and acceptance of non-member support. However, the International Union Elections Manual also provides that it is impermissible to use union funds and facilities in support of a person's candidacy.

I. Purpose and Scope of Article V, Section 27

Article V, Section 27 is entitled "Protection of the Union from Outside Interference." It was adopted by the 1978 Convention for the purpose of protecting the union against outsider involvement in its elections—an involvement which that Convention determined is con-

trary to the union's best interests. Thus Section 27 with one minor exception prohibits a candidate or a candidate's supporter from soliciting or accepting any financial or other support from a non-member. The term "non-member" is defined in Section 27 as any person who is either not eligible for membership under Article III or not in good standing, or any foundation, corporation or other entity whose funds are derived in whole or in part from any person not eligible for membership under Article III or not in good standing.

A. Candidacy, Timing and Purpose of Support

The term "candidate" is defined in Article V, Section 27 to include "a prospective candidate." Thus, financial or other support contributed by non-members cannot be used in future International Union elections even if the recipient was not yet an announced candidate for union office at the time such support was given. Nor does non-member support become permissible because it was given long before the announcement of candidacy.

Non-member support may not be transferred to a candidate or supporter irrespective of whether the person on whose behalf it was originally provided ever became an announced candidate.

Neither the timing nor the purpose of non-member campaign support would render permissible the use of such support in any International election. Thus, even if non-member campaign support was contributed prior to the adoption of Section 27, its use in any future campaign under Article V would constitute a violation of Section 27. Similarly the fact that non-member support was contributed for a campaign other than one governed by Section 27 would not render permissible its use in a Section 27 election.

B. What Constitutes "Support"

Article V, Section 27 of the International Constitution prohibits "financial support, or any other direct or indirect support of any kind (except an individual's own volunteered personal time)" to a candidate from a non-member of USWA. "Support" means assistance of any kind related to candidacy in an election under Article V.

1. Permissible Support

Article V, Section 27 establishes one and only one exception to the total prohibition against the providing of support by non-members. That exception is a non-member's own volunteered personal time. It is not a violation for a non-

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member to devote time to helping a candidate without receiving compensation for that time. But with this single exception, the prohibition against support by non-members is absolute. Thus, for example, it is permissible for a non-member public relations professional to volunteer his or her own personal time, but it would not be permissible for such individual to volunteer, or for a candidate to accept, such professional's facilities, secretarial or staff help, office space, or any other aid free of charge. It would also be impermissible for another non-member to compensate the public relations professional for his or her volunteered personal time.

2. Prohibited Support

a) Direct financial support

Direct financial support of a candidate by a non-member is, of course, prohibited by

the terms of Section 27. Accordingly, candidates and their supporters shall not solicit or accept contributions, whether in currency or check, unless and until they have determined that the contributor is a member of the Union.

b) Indirect support

All forms of indirect assistance of a candidate by a non-member, other than an individual's own volunteered personal time, are prohibited. Thus a non-member may not provide a candidate, any other member, or any other supporter with such items as printing services, office supplies, office space, meeting space, mailing lists or other items of value to the campaign unless the non-member charges and is paid the normal commercial price for such goods or services. Nor may a non-member use such items of value to produce or distribute material supporting a candidate, even though the materials are not provided to the candidate or the candidate's supporters.

It is a violation for a non-member to extend credit to a candidate or other member in connection with the provision of goods or services which are to be used in support of candidacy, except upon such terms and under such conditions as the supplier of such goods or services normally extends credit to commercial customers.

It is improper for a candidate or other member to borrow money from a non-member for use in support of candidacy, with the following single exception: money may be borrowed from a regular commercial

lending institution, on such terms and under such conditions as that institution normally lends money.

These are simply examples of Section 27's prohibition against any form of indirect non-member assistance to a candidate.

C. Solicit or Accept

Section 27 makes it improper for any candidate or supporter to "solicit or accept" any prohibited support. This prohibition extends to any form of solicitation or acceptance, whether direct or indirect. *Acceptance* of such support is improper, even when the support was not solicited. Accordingly, when prohibited support occurs, there will be a presumption that it was accepted by the candidate or the candidate's supporters, unless they have made affirmative, good faith efforts to dissuade the non-member from providing such support and to correct the effects of such prohibited support.

Should a non-member attempt to support a candidate without that candidate's solicitation or cooperation, it is the candidate's obligation to immediately contact the non-member, reject that support and request that it be discontinued, and take whatever action is necessary to avoid such support having an effect upon the election. As noted above, failure to do so will be evidence that the support was accepted.

Any attempt by non-members to influence Union elections undermines the policies set forth in Section 27. Accordingly, even if it is contended that non-member support was not solicited or accepted, the powers of the Campaign Contribution Administrative Committee extend to using all available means to secure the termination of such improper support and the correction of any effect it might otherwise have upon the Union's election.

D. Safeguards governing specific types of financial contributions

1. Checks

When candidates or their supporters receive donations by checks in any amount, they may not cash those checks unless and until they have determined that the potential contributor is a member of the Union. Upon request of a candidate, the International Secretary will promptly advise whether the potential contributor is shown on the Union's records as a member of the Union. All doubts must be resolved against cashing the check.

2. Cash Collections at campaign rallies, at plant and gates and on other occasions

Cash contributions may not be accepted from non-members. In recognition of the fact that at campaign rallies and similar events it may be difficult for candidates to closely monitor each contribution, the candidate must institute safeguards to assure that contributions from non-members are not accepted. For campaign rallies these safeguards include:

a) Rallies shall be advertised as open for attendance only to members of the Union.

b) At such rallies, the audience shall be expressly advised that only members of the Union are authorized to contribute.

c) Those in attendance who wish to contribute more than $5.00 shall be required to demonstrate that they are members of the Union, and their signatures, names and local union numbers shall be recorded.

Safeguards of at least equal effectiveness must be instituted for all other cash collections.

3. Fund Raisers

Where the fund-raising event involves the provision of goods or services to those attending (for example, dispensing foods), but the amount charged to attend, or to purchase such goods or services, exceeds the actual cost of providing the goods and services, the excess constitutes support within the meaning of Article V, Section 27, which cannot be solicited or accepted from a non-member. Accordingly, all such fund-raising events shall be governed by the safeguards applicable to campaign rallies and similar events under I-D-2 of these regulations. The provisions of I-D-2c, requiring that persons seeking to contribute more than $5.00 shall be required to demonstrate their membership status and have their signatures, names and local union numbers recorded, shall apply to such fund-raising events without regard to whether the portion of the payment constituting a contribution (that is, the total amount of payment less the cost of providing the goods and services received by the contributor) exceeds $5.

4. Raffles

If a raffle is used for the purpose of fund-raising, only members of the union shall be eligible to purchase raffle tickets, and the signatures, names and local union numbers of all purchasers shall be recorded.

II. Campaign Contribution Administrative Committee

Article V, Section 27 creates the Campaign Contribution Administrative Committee, directs the International Executive Board to appoint its members and empowers the International President to provide for their compensation and arrange for such assistance as the Committee

may require in the performance of its functions. The following provisions implement those directions:

1) The International Executive Board shall select the members of the Committee and shall designate one of the members of the Committee to be the Chairperson.

2) In view of the possibility that the Committee may have to take action on short notice, members of the Committee may confer and reach decisions by telephone. As prescribed in Article V, Section 27 of the Constitution, any two members of the Committee constitute a quorum, and may make decisions for the Committee.

3) Each member of the Committee shall be paid on a per diem basis for services rendered. The per diem rate shall be established by the International President. Members of the Committee shall also be entitled to actual expenses incurred in performing their duties.

III. Reporting of Support

A. Reports of Candidates

Each candidate for one of the positions in the 1981 International Election (including each prospective candidate) shall be required to file a report as described below on the January 1, February 1, March 1, April 1, April 15, and each Friday of each succeeding week in the remainder of April and each Friday in May preceding the election and on the June 15, July 15 and August 15 following the election. (In the event of elections to fill vacancies, the Committee shall designate appropriate reporting dates.) The Committee shall design the reporting form, and shall furnish an adequate number of copies of such form to each announced candidate.

Filing shall be accomplished by getting the report into the hands of the Chairperson of the Committee by the due date. The Chairperson shall promptly make available to all other announced candidates for the office all information contained on the report except the identity of those members of the union whose cumulative contributions to a candidate (or to a slate of candidates, if candidates have announced themselves to be part of a slate) are less than $25. The Committee shall have discretion to advise other candidates of the names of members who contributed $5 or more but less than $25, when there are circumstances which lead the Committee to believe that such disclosure is important to assure adequate policing of Article V, Section 27. The identity of members whose cumulative contributions to a candidate or slate of candidates are less than $5 shall not be disclosed to other candidates under any circumstances.

The first report shall include all requested information going back to the first receipt of support, and the first expenditure, whether or not the candidate was at that time an announced candidate, and shall be current as of five days before the date it is due to be filed. Each succeeding report shall include all requested information not included on prior reports, and shall be current as of five days before the date it is due to be filed.

The Committee shall have the responsibility for determining the precise information which is to be included in the report. However, the reporting form shall require at a minimum the following:

(a) a list of each check contribution, and each cash contribution (in the case of cash collected pursuant to I-D-2 and -3 above, each cash contribution exceeding $5) received by the candidate or by a supporter of the candidate, the

local union number of the contributor, the amount of the contribution, the form of the contribution (cash, check, etc.) and the circumstances of the collection (Mail, hand, raffle, etc.).

(b) a list of each check which is being held pending verification of the status of the contributor, with the name and address of the contributor and the amount of the check.

(c) a list of each check which a candidate has determined not to cash because from a non-member, with the name and address of the contributor and the amount of the check.

(d) a list of the time and place of each campaign rally or other fund-raising event at which cash was collected, together with written proof (including announcements of the event) and a certification by the sponsor of the event that the requirements of section I-D above were met; the total amount of cash collected at the event; the costs incurred in conducting the event (itemized); and a list of each cash contribution exceeding $5 and the name and local union number of each such contributor.

(e) a list of each non-member who is providing volunteered personal time in support of the candidate, including name, address, by whom regularly employed, occupation, nature of the services being provided the candidate, and an approximate indication of the amount of personal time devoted to such activities.

(f) the total expenditures incurred by the candidate, and a list of all persons or entities to whom expenditures have been made in an aggregate amount of $100.00 or more together with the amount, date and purpose of each such expenditure and the address of the recipient.

(g) a list of each loan made to the candidate or other member or supporter, identifying the lender, the lender's address, the amount of the loan, and the terms of repayment.

(h) a list of each conferral of credit for goods or services rendered to the candidate or other member or supporter, identifying the source of the conferral of credit, the transaction with respect to which credit is conferred, and the terms of the conferral.

The Committee is authorized to develop a special form for reporting by slates of candidates; provided, that such form must include all of the information described in (a) through (h) above.

The Committee is empowered to require any candidate to supply whatever additional information it deems appropriate.

B. Reports of Other Persons

The Committee is empowered to require any person to file such reports and furnish such information as the Committee determines appropriate to enable it to perform its functions under this Section 27.

C. Review and Investigation

The Committee shall promptly review all reports and information it receives. The Committee may conduct whatever investigations it deems appropriate.

IV. Committee Report

Immediately following the election, the Committee shall prepare a report which shall contain such description of its activities, findings, conclusions and recommendations as it deems appropriate. A supplemental report shall be prepared by the Committee following its review of the

August 15 reports. The reports shall be sent to the International Executive Board and the International Tellers and copies shall be sent to each candidate.

V. Enforcement of Article V, Section 27

The Constitution commits enforcement of Article V, Section 27 to the Campaign Contribution Administrative Committee, and prescribes the Committee's enforcement powers. In addition, any member who violates Article V, Section 27 commits an offense punishable pursuant to Article XII, Section 1(a) of the Constitution, in accordance with the procedures prescribed in Article XIII of the Constitution.

Committee Secretary Lynch: As it relates to the new section in Article V, new Section 27, on behalf of the committee, I move adoption of the committee recommendation.

Committee Chairman Williams: Thank you very much, Brother Secretary, for that very careful reading of the committee's recommendation.

I have been advised that there's been a little confusion out there among the delegates about the application of this. This is to international union elections. This is not to local union elections and I hope that's generally understood.

Now, obviously there are many who would like to have some debate on this. So, we will discuss this now for a time.

Mike 1.

Delegate Alex, Local 1157, District 28: Mr. Chairman, I rise in support of the resolution. I admire the guts and the determination of this executive board for coming forward to be counted in front. In the last election of our international officers we had some candidates who had their whole campaign contributed by people who didn't belong to any kind of a union organization. I feel that

the only thing we can do is stop them now, and I feel that the whole rank and file membership should go along with the executive board.

Thank you, Mr. Chairman.

Committee Chairman Williams: Thank you, delegate.

Mike 4.

Delegate Skraba, Local 6860, District 33: Mr. Chairman, I rise in support of the committee's recommendation, and I feel very strongly on this subject. If we are to let outside interests finance our campaigns, we are only in trouble. Organizations and groups such as those that stood outside these doors and at our plant gates passing out their newspapers and leaflets trying to tell us how to run the internal affairs of this union will try to control our elections. Organizations and groups such as these are parasites upon this union and can only do us harm.

I think if we continue to let outside interests influence our campaigns, we are going to lose—the members are going to lose control of this great union, and corruption will follow. I urge you, for the betterment of the United Steelworkers of America, and so we can retain the label as the cleanest union, adopt this resolution today.

Thank you.

Committee Chairman Williams: Thank you, delegate.

Mike 3.

Delegate Dowdell, Local 1033, District 31: Mr. Chairman, I rise in support of the executive board recommendation. I know a person can only serve one master. If Steelworkers know donations help elect them, then they will serve the Steelworkers. If corporation donations help elect them, then they will serve the corporations. We don't need corporations running our union. Thank you.

(Applause)

Committee Chairman Williams: Mike 11.

Delegate Chandler, Local 3566, District 7: Mr. Chairman, I rise in support of the committee's recommendation. Thank you.

Committee Chairman Williams: Mike 10.

Delegate McMills, Local 1397, District 15: Mr. Chairman, we urge that this convention vote the proposal down. All of us agree that there should be no outside money in international campaigns, but the provisions of this recommendation are unworkable, at best, and unconstitutional, at worst. We believe that candidates can only have an equal opportunity to campaign if the international provides the funds and sets the limits on what can be spent. We urge a no vote on this proposal.

Committee Chairman Williams: Director Thrasher of the International Executive Board has asked for the microphone.

Director Thrasher.

Committee Secretary Thrasher: Mr. Chairman and delegates to this 19th Constitutional Convention: I rise in support of this resolution. Our union and its members since its inception has established an outstanding record of achievement in the field of collective bargaining and social progress. As our members in the early days, when this union was formed with great sacrifice and, yes, even loss of life, started the movement to build this great union, so have our members today and over the years dedicated themselves to continuing this union's quest for human dignity and industrial democracy. This union, your union, today stands as an outstanding example of an honest, free, democratic trade union built by its own members.

(Applause)

This proud record has been achieved by our members who pay dues in this union, who negotiate the contracts,

who handle the grievances, and, yes, even walk the picket lines. During the last election, as chairman of the McBride Team Campaign Committee, I saw firsthand the efforts of outsiders to take over this union, your union. It was a massive attempt, a massive attempt by outsiders who do not pay dues, who do not negotiate contracts, who do not handle grievances and, yes, who do not even walk the picket line.

(Applause)

Who were the outsiders who put the money in? They are my and your archenemies, the corporate executives, the stockbrokers, the bankers, plus a collection of so-called political power brokers throughout the United States. They claimed to be for union democracy. I say this morning, let this delegation tell them today, we don't need outsiders to run this union. We can run this union.

(Applause)

I say to you, adopt this resolution this morning and tell these do-gooders to keep their nose out of our affairs.

Thank you very much.

(Applause)

Committee Chairman Williams: Delegates, I obviously can hear the question being called, but there are a number of persons who want to speak and there are a number at the mikes. Let's listen to a few more of the delegates. Bruce Anderson from Local Union 6193, who is a member of the Constitution Committee, has asked to speak. Delegate Anderson.

Delegate Anderson, Local 6193, District 37: Thank you, Mr. Chairman.

Fellow executive officers, brothers and sisters:

At our last election there was over $100,000 contributed from outside interests. These corporations had $16 million in investments and over 550 locals that we represent.

The biggest contributor was the Rockefeller Foundation, along with Tenneco, which has interest in Newport News Shipbuilding, which has been on a long and bitter strike. Some of the other corporations were United States Steel, NL Industries, Bliss & Laughton, Tenneco, National Can, Minnesota Mining and Manufacturing, Kennecott Copper, Kaiser Aluminum, Newmont Mines, Standard Oil Co., Pullman, Inc., Inland Steel, Sears, Roebuck and Co., Kaiser Industries, Youngstown Steel Door Corp., Phelps-Dodge, and numerous others.

Now, I know one thing. When I give PAC money and when we give it to candidates, we expect something. We have all got selfish interests in that regard. When we give something we expect something in return.

My question to you brothers and sisters is, what did these corporations expect in return? We have got collective bargaining agreements with them. We are diametrically opposed to them. Just what did they expect in return?

It has been my honor to serve on the Constitution Committee. We had one member on the Constitution Committee that is a member of the executive board that stood up and spoke against this in the committee meetings. He indicated interest because he would like one of his relatives, if possible, to be able to contribute if he wished to run for international office.

Now, I ask you, where do you stop it? Just where do you stop it if you start with relatives? I don't know where all the other brothers' and sisters' relatives stand. I don't know if they are part of these corporations. I don't know if they are involved in other unions, and I don't know what their interests are. But I know the Steelworkers are the Steelworkers, and, by golly, you know, the Steelworkers is what this union is all about, and the Steelworkers should be the only people contributing.

I think it took a lot of guts and determination of the executive board to come up with this proposal and the guidelines under which this is going to be administered.

Now, you know, the committee that is going to enforce this will be people outside of the union, and I say that's the only way it can work, because otherwise if you had committee people within the union, interests could be involved in it. They have the final word, and that's the only way they could function is to give them authority.

I don't particularly like it, but that's the only way it will work, brothers and sisters.

Okay, everybody is saying, give us a chance. I wanted the chance to stand up as a member of the committee and say these few words to you. I appreciate your indulgence and I thank you.

Committee Chairman Williams: Mike 12.

Delegate Ehman, Local 1537, District 19: I am aware that many local unions as well as our own have submitted resolutions to the committee dealing with this subject that the committee has presented for the delegates here this morning. I believe, as some of the other delegates have also said and the committee said, that there is no place in this union for outside financing, non-internal union support. Personally, myself, I wouldn't accept it, and I don't think any other delegates would.

However, I don't believe that the committee's proposal would address itself to that without infringing upon the democratic rights of any member or any delegate within the United Steelworkers of America.

I believe in the union. I think everyone here does. There are two main problems that came out of the last international election for executive board members. One dealt with raising finances for whichever cause, and the other dealt with disclosure, where the money came from.

I believe that the committee's proposal before the delegates is basically the same type of reaction that they had in the State of California with the Proposition 13. I think the committee should propose a recommendation. Our local union submitted a proposal. I would like to have it read. I am not saying it is the best one. I think it could go back to committee and possibly another recommendation other than the one that the committee has recommended to this delegation could be submitted. I think the recommendation should deal solely with where the money comes from and who is contributing it.

I would like to have the resolution dealing with the finances of electing officers for the International Executive Board read at this time, if I might.

Committee Chairman Williams: The secretary of the committee will read the resolution.

. . . Committee Secretary Lynch read the following resolution:

"Election Financing of Candidates for International Executive Board Office

"WHEREAS, the cost of both time and money continues to increase regarding the nomination and election of officers of the United Steelworkers of America, International Executive Board and,

"WHEREAS, considering the fact that the incumbency will always have an advantage, in so far as utilizing their prestige and office, when campaigning for election or reelection, or in support of their favorite candidate and,

[Photo Omitted in Printing]

"WHEREAS, this 'built in' advantage often times requires the challenger to sometimes seek 'OUTSIDE' moral, physical and financial support and,

"WHEREAS, as in the preceding (1977) USWA election, as with the (1977) UMWA election, such support, as reported by the 'Media,' often gave a false and sometimes manufactured impression to both the voting membership and the general public, and in turn, confusing both with sometimes false accusations rather than the relevant union issues, and

"WHEREAS, it should always be any member's inherent right to attain an elective International Executive Board position, based solely upon their desire and ability, without seeking or accepting any 'non internal union support.'

"THEREFORE, BE IT RESOLVED, that the International Constitution be changed to provide; that any member who desires to be a candidate for an elected office to the International United Steelworkers of America Executive Board, be assured of the financial support needed for such candidacy, providing certain pre-requirements are met, through the present dues structure and,

"BE IT FURTHER RESOLVED, that such campaign financing may be patterned from the present 'Presidential Campaign Financing Act,' with a specific predetermined financial limits based upon a percentage and,

"BE IT FURTHER RESOLVED, that the United Steelworkers of America Campaign Financing Fund be financed at an amount not to exceed $1.00 per member from the present 'General Fund Account' once every four years and,

"BE IT FURTHER RESOLVED, that by such financing of United Steelworkers of America election campaigns for International Executive Board Offices, that the United Steelworkers of America will continue to be the leader in showing to both the public, and more importantly, the membership, that the members, and only our members, shall have the final say in determining our future.

"Approved by the Executive Board and the membership of Local Union 1537, signed by the President, Joseph DeFall, and Recording Secretary Charles M. Hill, dated Aug. 10, 1978."

Committee Chairman Williams: Thank you. Are you finished on Mike 12?

Delegate Ehman: I'd just like to, at this time, thank the Chair for reading the resolution. I don't think any resolution should increase the amount of dues that any delegate or member of this union should have to pay. It should be remembered that as a result of the contest of the last election of the International officers that the legal fees that the international is incurring are somewhere in the neighborhood of one and a half times the amount of the costs which would be required to finance as this proposal or this resolution to the constitution would do.

I would recommend that the delegates vote no to the committee's recommendation here today and that the committee come back with a proposal that would adjust itself to the problem of financing and disclosure. Thank you, Mr. Chairman.

Committee Chairman Williams: Mike 9. Mike 9.

Delegate Vogel, Local 12561, District 34: Brothers and sisters, I rise in full support of this new Section 27. This is our union, a great union, and we should keep in full control of it without any influence from outside groups or organizations whose ultimate goal may not be in the best interest of this union. This is our union and rightfully so. Let's keep it that way. Thank you.

Committee Chairman Williams: Mike 8. Mike 8.

Delegate Srygler, Local 4266, District 30: Mr. Chairman, I rise in support of this Article V, Section 27, a new Section 27. I hope all delegates will give this great

thought and consider it fully and adopt the same. Thank you.

Committee Chairman Williams: Director Balanoff has asked to speak, a member of the International Executive Board.

District Director Balanoff: Brothers and sisters, I rise in opposition to this proposal, and I do it proudly because this is going to be a sorry day for this union if you vote this recommendation to our constitution up. We're going to move into the '80s. That's the theme of this convention. If you vote for this recommendation, you close the opportunity for thousands upon thousands of people that want to serve this union. This resolution—

. . . The speaker was interrupted by the delegates.

Committee Chairman Williams: Order, delegates. Order, delegates. Permit the delegate to speak.

Director Balanoff: This resolution closes this union to young people, to others. All this serves is to keep the present officers in office.

Yes, I oppose this resolution, because I believe in democracy. Yes, I oppose this resolution, because it's not to the best benefit of our union.

They raise the false issue about outside influence. Nobody wants corporation money. Nobody. And that's not the problem here. The problem here is *how* to open this union so more people can run.

The brother that spoke at Mike 12 recommending that this go back to the committee and that we come up with a democratic solution to this problem—we can do that, a method where every member voluntarily contributes $1 every four years. When a candidate makes the ballot, that money is distributed equally among the candidates, so that people who want to run are not burdened by this.

You know, you look at that list of recommendations. The only thing that's not on there is that I have to get

the okay from the president of this organization to run. There is question about this recommendation. Number one, there's no question that it's not fair, and it's undemocratic. Number two, I have strong feelings that it's not legal.

I urge you for the good of this union, for the good of yourself, to vote this recommendation down and instruct the Constitution Committee to come up with something, to vote it down and to come back with something—

. . . The speaker was again interrupted.

Committee Chairman Williams: Order, delegates. Come on now. Let's have order and permit these various points of view to be expressed. Let the director conclude his remarks.

District Director Balanoff: I urge you for your own good and for this great union to vote these recommendations down urging the Constitution Committee to come back with something that's workable. Thank you.

Committee Chairman Williams: I would ask your indulgence, delegates. Listen to a suggestion for one moment. There are people on a couple of mikes, 5 and 2, who have been waiting and waiting. Hear me out.

President McBride has asked for an opportunity to speak to the delegates on this subject and I'm sure you want to hear from him. What I will do is take the speakers from Mike 5 and Mike 2, then ask President McBride to speak.

I did forget one. Director Wampler asked to speak. I will ask Director Wampler to speak now and then proceed with 5 and 2 and then President McBride and then we'll test the house. Director Wampler.

District Director Wampler: Mr. Chairman, brother and sister delegates and guests: Yes, I rise to speak on this proposition because I think it is a wrong proposal to

bring before this body. In my opinion, in my opinion this resolution is unconstitutional. It insults the intelligence of our members. It's a ridiculous resolution. Any member who wants to run for office could be framed under this and his office taken away from him.

I, too, am opposed to outsiders running this union. I did not receive one dime of outside money running for director, that I know of. There was some raffles run in my behalf that I don't know who some of the money came from, but I say the raffle came from the working man because that's all who I contacted.

Do you realize that this action, if you take the affirmative here, will prohibit donations from your mother, your father, your brothers and sisters, to your campaign? You should have read this, brothers and sisters.

I won't take any more of your time because I see the mood. But I recommend that this be defeated and the executive board ordered by this convention to go back into session and bring out some decent rules and regulations for the elections.

Now, you know we got three years, we got three years before we have another international election. Two years from now we will have another constitutional convention. This should give us ample time, should give the board ample time to write up some rules and regulations that would not jeopardize and take away the rights of the union members.

I'm opposed to taking away any rights we now have and, in fact, I'd like to liberalize the laws to make it easier to run for office. Thank you very much.

Committee Chairman Williams: Mike 5.

Delegate Murray, Local 3129, District 6: Thank you, Brother Chairman. I rise in support of the committee's recommendations in this section. Without making a long

speech, my local union was subjected to outside interference at the time of the last international election by people who never paid a goddamn union dues in their life. Subsequent to that we were subjected to a long list of phony charges, this despite the fact that the scrutineer for the defeated candidates congratulated our committee on the night of the election when we completed out job.

I believe that the members of this union, Brother Chairman, are capable of determining the future without any outside interference whatsoever. I think that these are fair additions to our constitution which will help us to do just that, and I wholeheartedly support the committee's recommendations on this matter. Thank you, Brother Chairman.

Committee Chairman Williams: Mike 2.

Delegate Morris, Local 1742, District 37: I rise in full support of this resolution. It's about time, and I must commend the committee for coming up with something to keep out these outside groups. We don't need their money, we don't need their support to run our business. We've been doing fine and we'll continue to do good without their support.

I urge all the delegates here at this convention to support this resolution and adopt it. Thank you.

Committee Chairman Williams: Thank you, delegate.

We have now toured the hall including Mike 3 which was very early on the list.

I now ask the president of our union, President McBride, to speak to the convention on this resolution. President McBride.

President McBride: Mr. Chairman and delegates to this convention, the proposal before you is the result of an experience that our union has had. The record is complete. Many of you made substantial sacrifices in the

interest of the union in order to deal with the problem that was created primarily by great substantial sums of money from people who had no identity with the union or, for that matter, the labor movement, but who felt called upon to exert substantial influence upon the direction that this union should take.

I don't know whether the effect of such conduct was fully understood by the people who did that, but they presumed to affect the lives of millions of people, to affect the collective bargaining policies, to affect the political stance of our union, to affect our relationship with other unions and to change the direction of the labor movement.

Now, I am inclined to believe that the labor movement should determine its direction from within. It seems to me that the labor movement will have to pay the price for the mistakes that might be made in such determinations and that, therefore, the labor movement should be the exclusive source of such determinations.

I'm aware that from the very beginning the policy of United Steelworkers of America, and before it SWOC, was one of responsibility, responsibility to our membership. Yes, responsibility to the employers with whom we negotiate; responsibility to our community and certainly responsibility to our government and our country. From the very beginning this was the concept of the movement of which the United Steelworkers became a part and eventually a dominant force.

During the last election you saw the name of United Steelworkers of America dragged in the mud. You saw the name of great people, great Americans holding the highest award that our governments can give to a citizen, I. W. Abel, who was under attack, whose character was besmirched and with absolutely no truth to the matter. I had the privilege to know I.W. Abel down through the years and I had the privilege of knowing the kind of service and dedication that he gave to this union. He

helped to make our union a militant, effective force in the workplace.

(Applause)

But because he decided that it would be in the best interest of this union and for other reasons, perhaps, but in part, because he decided to stay aloof from certain political forces, those political forces concluded that he should be destroyed.

I can't accept that philosophy. I can't accept the idea that United Steelworkers of America in the truest form of human democracy, cannot control its own destiny, cannot separate bad leaders from good leaders, cannot cast aside those who don't serve well. It seems to me that the people who serve this union should be judged by you, the membership of this union. Judge hard, if you will. Judge strictly, but you be the judge. You be the force to elect or defeat candidates who aspire to serve you. I think if that happens, this union will remain in good hands because I have absolute confidence in the judgment of the membership and the leadership of this union at all levels.

(Applause)

I want to say to you that an effort has been made to establish effective regulations which will keep the control of this union within the hands of the membership. They are thorough, they are complete, they are specific, they are clear. An effort has been made to make our elections a complete and above-board operation. The public people who would serve as the Campaign Contributions Committee are by definition required to be prominent people of good character and, of course, the selection of those people would be in the direction of responsibility with a thorough concept of the social responsibility that they assume when they accept the position of independent judgment of the conduct of the election and the campaign contributions, particularly the campaign contributions, that involve our elections.

Responsibility has been placed in them, and deliberately so. It's been taken away from the incumbents. They are an independent entity, they have an independent force, they have an independent effect, and they have an independent judgment, and there is no gimmickry here which might permit the incumbent to violate the rules. These rules apply just as thoroughly and just as hard to the incumbent as they do anyone else.

In addition to that, the incumbent as well as the aspirant, who is not an incumbent, have equal access to the committee, and the committee has full authority to file suit against anyone in order to see that these rules are enforced.

Well, I want to say to you in conclusion, because perhaps I have exceeded the five minutes, I think you understand, I think you understand the importance of the decision you're about to make. I say to you that the decision to adopt the recommendation of the Constitution Committee will be a long step in the right direction of preserving this union as an independent free union in the hands of its membership. I urge you to vote in favor.

(Applause)

. . . Cries of question.

Committee Chairman Williams: Order, delegates. Order.

I advised the convention a few minutes ago that I would test the house upon the conclusion of President McBride's remarks. I now do. Those in favor of the question being put indicate by saying aye. Contrary, no.

I will now put the question. All those in favor of the recommendation of the committee please indicate by saying aye. Contrary, no.

All those in favor of the recommendation of the committee please indicate by standing.

Please be seated.

Contrary, stand.

The motion is carried, and so ordered.

I would now ask you, before the secretary begins, to go back to your constitution books, and we will continue through the constitution in sequence.

Secretary of the committee.

What is your point of information? Mike 4.

Delegate Wilson, Local 2609, District 8: My point is, Mr. Chairman, that we have approximately 250 to 300 delegates in an area designated for Districts 1, 8 and 33. As I understand the rules, if an elected delegate wishes to speak on an issue and express an opinion, he has to stand in his area at his mike. You have consistently refused to recognize this mike. There have been people standing in order here on every controversial issue, and my point is, Mr. Chairman, number one, why? And, if there is no reason, where should we stand?

Committee Chairman Williams: My recollection, Delegate Wilson—and I think the record will show it to be correct—is that in the debate just concluded I recognized Mike 4 second in that debate.

Delegate Wilson: No, sir.

Committee Chairman Williams: Secretary of the committee.

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FINAL REPORT OF CREDENTIALS COMMITTEE

Committee Chairman Dougherty: Mr. Chairman, Secretary Edgar Ball will give the report for the committee, but I would like to comment on the many long hours this committee has spent in hearing the protests, straightening out those numerous problems which come to that committee, and especially pay tribute to the secretarial help. They have labored all day and half the night most of the time during this convention and for many weeks before

this convention, and the job has been very tough. They have done a good job, and I want to pay tribute to them for that effort they have made on our behalf.

Secretary Ball will complete the report for the committe.

Committee Secretary Ball: Mr. President and fellow delegates: The Credentials Committee of the 19th Constitutional Convention of the United Steelworkers of America has seated 4,227 delegates.

This includes the seven delegates from Local Union 1010 who were not seated when we submitted our Report on Protests on Tuesday, Sept. 20, 1978, but who have now provided the committee with sufficient evidence establishing their compliance with the meeting attendance requirement.

Mr. Chairman, on behalf of the Credentials Committee, I move adoption of this report.

. . . The recommendation of the committee was adopted.

President McBride: This completes the work of the convention. If I may, I would like to take just a minute to express my appreciation to all the people who helped to make this convention what I think to be a splendid success. The convention has been orderly the overwhelming portion of the time and even the disorders were very mild.

An effort was made to let every delegate speak as time would permit and I think we accomplished that goal to a reasonable degree. I, for one, feel that the future of our union is bright; that we will continue on the right track and I appreciate the dedication of all of those who feel likewise.

It's my privilege now, as the president of your international union, to declare this convention adjourned. Thank you very much.

. . . At 1:30 o'clock p.m., on Friday, Sept. 22, 1978, the 19th Constitutional Convention of the United Steelworkers of America, AFL-CIO CLC, adjourned sine die.

APPENDIX "D"
REQUESTED "NO" VOTES GIVEN RECORDER AT 19TH CONSTITUTIONAL CONVENTION

Article IV

Steve Rodich, Local Union 1211; Paddy Grimes, Local Union 1211; Alex George, Local Union 1211; Richard Vallecorsa, Local Union 1211; Eugene Mowad, Local Union 1211; Joe Vukmanovich, Local Union 1211; Emil Shemer, Local Union 1211; Eugene Costanza, Local Union 1211; Steve Paich, Local Union 1211; James DiCiero, Local Union 1211; Paul E. Gipson, Jr., Local Union 6787; Jim White, Local Union 6787; Andy Hopkins, Local Union 6787.

Article V, Section 5

Van F. Ross, Local Union 2869; Rick Flores, Local Union 2869; Louis Diaz, Local Union 2869; Ralph Shoultes, Local Union 2869.

Article V, Section 27

Joe Bautista, Local Union 2869; Andy Testman, Local Union 2869; Chuck Cartwright, Local Union 2869; Nate Davis, Local Union 2869; Jim Vezie, Local Union 2869; Joe Rodriguez, Local Union 2869; Nick Hermandez, Local Union 2869; F. C. Moreno, Local Union 2869; Ralph Shoultes, Local Union 2869.

Article VI

Van F. Ross, Local Union 2869; Rick Flores, Local Union 2869; Louis Diaz, Local Union 2869; Ralph Shoultes, Local Union 2869.

Article VII

Roger Klander, Local Union 6115.

Article XIV

Mike Olszanski, Local Union 1010; Mary Hopper, Local Union 1010; William Andrews, Local Union 1010; William Gailes, Local Union 1010; William Holmes, Local Union 1010; Louis Britton, Local Union 1010; Clifford Mezo, Local Union 1010; Joe Gutierrez, Local Union 1010; Alonzo Beverly, Local Union 1010; Don Lutes, Jr., Local Union 1010; Mike Mezo, Local Union 1010; Joe Gyurko, Local Union 1010; James Caruthers, Local Union 1010; Jim Robinson, Local Union 1010; Phil King, Local Union 1010; Robert Flores, Local Union 1010; Aurelius Allen, Jr., Local Union 1010; Dave Brooks, Local Union 1010; James Ross, Local Union 1010; George Harris, Local Union 1010; Arman Rocha, Local Union 1010; Leroy Liptak, Local Union 1010; Leo Hernandez, Local Union 1010; Agustin Chapa, Local Union 1010; John Porter, Local Union 1010; Jimmie Freeman, Local Union 1010; Jim Carpenter, Local Union 1010; Juanita Holmes, Local Union 1010; Al Pena, Local Union 1010.

Charles T. Hobbs, Local Union 1011; Loren Hanson, Local Union 1011; Robert Rospierski, Local Union 1011; Robert Haley, Local Union 1011; Ray Mitchell, Local Union 1011; Mario Cuellar, Local Union 1011; Daniel Nolan, Local Union 1011; Charles W. Davis, Local Union 1011; Oliver W. Dixon, Local Union 1011; Henry Rowsey, Local Union 1011; Norman Purdue, Local Union 1011.

Jack Parton, Local Union 1014; James Brown, Local Union 1066; Samuel Ampeliotis, Local Union 1066; Ned Pujo, Local Union 1066; James Gill, Local Union 1066, Cary Kranz, Local Union 1066; Gary Ingram, Local Union 1066; Eugene Wiggins, Local Union 1066.

Steve Rodich, Local Union 1211; Paddy Grimes, Local Union 1211; Alex George, Local Union 1211; Richard Vallecorsa, Local Union 1211; Eugene Moward, Local Union 1211; Joe Vukmanovich, Local Union 1211; Emil

Shemer, Local Union 1211; Eugene Costanza, Local Union 1211; Steve Paich, Local Union 1211; James DiCiero, Local Union 1211.

John Ingersoll, Local Union 1397; Michele McMills, Local Union 1397; Thomas Allen, Local Union 1397; John Balint, Local Union 1397; Elmer Delledonne, Local Union 1397; Ronald Mamula, Local Union 1397; Thomas Jugan, Local Union 1397; Robert Stevenson, Local Union 1397; Ronald Weisen, Local Union 1397; Ronald Funk, Local Union 1397; Joseph Stanton, Local Union 1397; Rudolph Quintero, Local Union 1440; Frank Favaloro, Local Union 1440; William Milano, Local Union 1440; Walter Rozum, Local Union 2635; Peter Knaze, Local Union 2635; Nick Yewcic, Local Union 2635; Norman King, Local Union 2635.

Nate Davis, Local Union 2869; Joe Rodriguez, Local Union 2869; Jim Vezie, Local Union 2869; Joe Bautista, Local Union 2869; Nick Hernandez, Local Union 2869; Chuck Cartwright, Local Union 2869; F. C. Moreno, Local Union 2869; Rick Flores, Local Union 2869; Louis Diaz, Local Union 2869; Van Ross, Local Union 2869; Ralph Shoultes, Local Union 2869.

Gloria Kelly, Local Union 6787; David Sullivan, Local Union 6787; George Troy, Local Union 6787; Donald Moore, Local Union 6787; Henry George, Local Union 6787; Diane Kaczocha, Local Union 6787; Bobbie Clemmons, Local Union 6787; Paul Kaczocha, Local Union 6787; Jeff Houston, Local Union 7955; Albert Avenel, Local Union 13000, Frank Randazzo, Local Union 13000; Charles Winkler, Local Union 13000; James Pepitone, Local Union 13000; Eugene Graff, Local Union 13000.

Resolution No. 23

Charles Hobbs, Local Union 1011; Robert Rospierski, Local Union 1011; Loren Hanson, Local Union 1011; Henry Rowsey, Local Union 1011; Daniel Nolan, Local

Union 1011; Oliver Dixon, Local Union 1011; Robert Milligan, Local Union 1011; Charles Davis, Local Union 1011; Dennis Adams, Local Union 1011; Mario Cuellar, Local Union 1011; Ray Mitchell, Local Union 1011; William Kelley, Local Union 1011.

Resolution No. 24

John Chico, Local Union 65; Mark Collins, Local Union 65; Paul Porter, Local Union 65; Larry Babich, Local Union 65; Eli Mrkobrade, Local Union 65; Lupe Valadez, Local Union 65; Cass Tomasik, Local Union 65; Ed Hojnacki, Local Union 65; Ronald Wisniewski, Local Union 65; Larry James, Local Union 65; Alice Peurala, Local Union 65; Leon Randall, Local Union 65; Wallace Weidner, Local Union 67; Jim Carpenter, Local Union 1010; Mike Mezo, Local Union 1010; Jim Robinson, Local Union 1010; Agustin Chapa, Local Union 1010; Arman Rocha, Local Union 1010; Juanita Holmes, Local Union 1010; Leo Hernandez, Local Union 1010; William Holmes, Local Union 1010; William Andrews, Local Union 1010; Clifford Mezo, Local Union 1010; Mary Hopper, Local Union 1010; Phil King, Local Union 1010; Don Lutes, Local Union 1010; Joe Gyurko, Local Union 1010; James Ross, Local Union 1010; Joe Sanders, Local Union 1010; Alfredo De Jesus, Local Union 1010; Ralph Lopez, Local Union 1010; Ignacio Rodriguez, Local Union 1010; John Santos, Local Union 1010; Joe Gutierrez, Local Union 1010; Mike Olszanski, Local Union 1010; Louis Britton, Local Union 1010; Robert Flores, Local Union 1010; Angel Almeda, Local Union 1010; John Aguilera, Local Union 1010; Dave Brooks, Local Union 1010; William Gailes, Local Union 1010; Jimmie Freeman, Local Union 1010; Richard Jones, Local Union 1028.

James Brown, Local Union 1066; James Gill, Local Union 1066; Eugene Wiggins, Local Union 1066; Samuel Ampeliotis, Local Union 1066; Cary Kranz, Local Union 1066; Ned Pujo, Local Union 1066; Gary Ingram, Local Union 1066.

Ronald Funk, Local Union 1397; Joseph Stanton, Local Union 1397; Richard Grace, Local Union 1408; Robert Petro, Local Union 1408; Dominic Margliotti, Local Union 1408; John Waskowitz, Local Union 1408; Frank Dodds, Local Union 1408; Edward Ratesic, Local Union 1408; William Turkall, Local Union 1408; George Ratesic, Local Union 1408.

Rudolph Quintero, Local Union 1440; Frank Favalora, Local Union 1440; Ed Mann, Local Union 1462; Joseph Kuhns, Local Union 1462; James Mitchell, Local Union 1462; Robert Carter, Local Union 1654; Glen Thompson, Local Union 1663; Stephen C. Daugherty, Local Union 1859; Joe Samargia, Local Union 1938; Londi Neari, Local Union 1938; Edward Walberg, Local Union 1938; Robert Bratulich, Local Union 1938; Kevin Fahey, Local Union 1938; Jack Bingel, Local Union 1938; Terry Johnson, Local Union 1938.

William Leudee, Local Union 2141; H. E. Hallin, Local Union 2251; Joe Cassavia, Local Union 2251; David Wilson, Local Union 2609; Marion Wilson, Local Union 2609; F. L. Hasselberger, Local Union 2609; Edward Buinov, Local Union 2609; Raymond Sweet, Local Union 2609; Harry Porter, Local Union 2609; Joseph Manzo, Local Union 2609; George Johnson, Local Union 2609; Marshall Megginson, Local Union 2609; Frank Bowens, Local Union 2609; Raymond Pieczymski, Local Union 2609; Rudy Armstead, Local Union 2609; Joseph Kotelchuck, Local Union 2610; Crispino Gutierrez, Local Union 2610; Ralph Brewer, Local Union 2610; James Butterfield, Local Union 2610; Alexander Lawrence, Local Union 2610; Richard Bennett, Local Union, 2610; Ronald Allowatt, Local Union 2610; Theron Scott, Local Union 2610; Henry Daniels, Local Union 2610; Paul Cunningham, Local Union 2610; Norley Hall, Local Union 2701; Ed Anderson, Local Union 2701; Arthur Beagley, Local Union 2701; Kenneth Buys, Local Union 2701; R. Duffin, Local Union 2701.

F. C. Moreno, Local Union 2869; Andy Testman, Local Union 2869; Joe Bautista, Local Union 2869; Nate Davis, Local Union 2869; Rick Flores, Local Union 2869; Joe Rodriguez, Local Union 2869; Van F. Ross, Local Union 2869; Louis Diaz, Local Union 2869; Ralph Shoultes, Local Union 2869; Val E. Christensen, Local Union 3736; Elroy Rafferty, Local Union 4108; James Kozar, Local Union 4108; Steve Quaife, Local Union 4108; Joe Smilanich, Local Union 4108; Ray Busch, Local Union 4757; Bill Larson, Local Union 4757; Al Lupini, Local Union 4889; James Coon, Local Union 4889, Carmen Rettzo, Local Union 4889; Lou Laureti, Local Union 4889; John Ksionska, Local Union 4889; Sam Dilisio, Local Union 4889; Louis Genevie, Local Union 4889; William Offenheiser, Local Union 4889; Al Morgan, Local Union 4889; Charles Lorady, Local Union 4889; Tony Semeraro, Local Union 4889; Stanley Maciejczak, Local Union 5200; Donald Lohman, Local Union 5440; John Coffield, Local Union 6103; Rudolph Nichols, Local Union 6103; Raymond Patrick, Local Union 6103;

Roger Klander, Local Union 6115; David Sullivan, Local Union 6787; Paul Kaczocha, Local Union 6787; Diane Kaczocha, Local Union 6787; Bobbie Clemmons, Local Union 6787; Henry George, Local Union 6787; Gloria Kelly, Local Union 6787; George Troy, Local Union 6787; Donald Moore, Local Union 6787; Paul Gipson, Jr., Local Union 6787; Andy Hopkins, Local Union 6787; James White Local Union 6787; Edward Lozano, Local Union 7771; Jeff Houston, Local Union 7955; Albert Roush, Local Union 12625.

Voted for Roll-Call Vote

Attico A. Brandi, Local Union 1557; Michael Solito, Local Union 1557; Clyde Desiderio, Local Union 1557; Charles Stokes, Jr., Local Union 1557; Steve P. Sujeta, Local Union 1557; Joseph Massie, Local Union 5646.

WILLIAMS—APPENDIX H

[Letterhead Omitted in Printing]

October 28, 1977

MR. AXTELL'S BIG LIE

Mr. Axtell has seen fit to react and resort to dirty tricks in an attempt to confuse you, the membership, with lies, distortions, misquotes and deceit.

Two days ago Mr. Axtell put out a letter claiming to quote me and my feelings towards my Union, the United Steelworkers of America. He did this through a high-paid, slick, anti-union public relations firm, who has a long history of Union busting tactics. Mr. Axtell's letter is completely false, and is constructed to have you, the membership, believe that our Union would not serve your best interests.

The fact is that I, Ed Sadlowski, believe and have said, "that the United Steelworkers of America is the finest, most Democratic, most honest, and responsive, Union in the United States". Our members have and enjoy benefits far exceeding anything you at Desa receive. (For example, the average wage for the 120,000 members of the United Steelworkers of America here in the Chicago area, is presently $7.83 per hour). Ask yourself, how many of you at Desa make $7.83 per hour?

We have negotiated pensions, insurance, holidays, vacations, sick-days, and many other benefits, far in excess of what you Desa employees now receive.

The Constitution of the United Steelworkers of America states that our membership will vote and elect their representatives on the national and local level (by secret ballot).

As a member of the United Steelworkers of America for 21 years, I have participated in this democratic proc-

ess; personally running for union office from shop steward to national President, and always keeping in mind that it was the Union and not the Company that gave me, and my fellow members, the right to choose people to act in our behalf.

If Mr. Axtell's statements were not distorted, why then, did he not agree to a debate between himself and me in front of all Desa employees, in order that they could openly weigh the facts?

Ask yourself, if the United Steelworkers of America is so bad for Desa employees, why is Mr. Axtell fighting so hard and dirty in opposition?

I strongly encourage you, for your benefit and the benefit of future Desa employees, to vote "YES" today in order to secure a better tomorrow.

Thank you for your cooperation and courtesy throughout the period of this organizing campaign.

Sincerely,

/s/ Ed Sadlowski
ED SADLOWSKI,
Staff Representative
United Steelworkers of America

AFFIDAVIT OF JOSEPH JENESKE

Joseph Jeneske, being duly sworn, deposes and says:

1. I am Director of the Personnel Department of the United Steelworkers of America, AFL-CIO-CLC (hereinafter "USWA"), and have held that position since 1974. I have been a member of USWA since 1937. My duties as Personnel Director extend to all employees of USWA, both in its headquarters office in Pittsburgh and in its many field offices.

2. The headquarters employees and the field staff employees both are represented by labor organizations which negotiate collective bargaining agreements on their behalf with USWA. Each of these agreements forbids USWA's taking any adverse action against an employee except for "just cause", and thus precludes USWA's taking any adverse action based upon an employee's role in USWA's internal union elections. These agreements contain grievance procedures culminating in binding arbitration before a neutral arbitrator which fully protect any employee against reprisal for his participation in, or choice not to participate in, internal-union political activities.

3. In advance of each USWA election, it is customary for the President of USWA to address a letter to all USWA employees reiterating the political freedoms which they enjoy in connection with elections of USWA officers. I have attached as Exhibit A President Abel's letter of October 20, 1976, which was sent 3½ months prior to our most recent election in 1977. As this letter makes clear, no employee of USWA is required to contribute to or support the incumbent officers of USWA, each is free to contribute to and support those opposing the incumbent officers, and no employee "can be disciplined or subjected to any form of reprisal" for the actions he or she takes in these respects.

4. It is very common for USWA employees to run against incumbent USWA officers or those supported by the incumbent officers, and, where not themselves candidates, to support and contribute to those who do. For example, in the 1977 election, the Sadlowski slate included Oliver Montgomery, an employee in the Research Department at USWA's Headquarters, who ran for Vice President-Human Affairs; Andrew Kmec, a field staff representative (who was, at the time he announced his candidacy, the president of the union representing the field staff employees), who ran for Treasurer; and Marvin Weinstock, another field staff representative, who ran for Vice President-Administration. Each of these individuals, although defeated in the 1977 election, continues to hold today the same employment position on USWA's staff that he held prior to his becoming a candidate.

In that same 1977 election, three staff representatives ran against and defeated incumbent District Directors (in Districts 19, 28 and 33), while in nine other districts staff representatives ran for and were elected to District Director positions where the incumbent Director was not seeking re-election. In addition, there were more than 20 staff employees who competed unsuccessfully for District Director positions; despite their election defeats, all have retained their staff positions with USWA.

5. I have attached as Exhibit B a letter by Andrew Kmec, in his capacity as president of the field staff union, addressed to all field staff employees, written shortly before Kmec's announcement of his candidacy in the 1977 election. This letter reminded all field staff employees of their political freedoms, as articulated by USWA's President, and encouraged anyone who believed he was the victim of coercion or political reprisal to file a protest thereto. In fact, not one USWA employee filed a grievance alleging coercion or political reprisal in connection with the 1977 election.

6. After the 1977 election, the Sadlowski slate filed a protest with the Department of Labor alleging that the election had not been conducted in conformity with the LMRDA, and that violations had occurred which may have affected the outcome. One of the violations alleged was that staff employees had been coerced into contributing to the McBride slate. Following an extensive investigation of this allegation, the Secretary of Labor found "no evidence that staff representatives were coerced into making contributions to the McBride slate" (Statement of Reasons, p. 13; see also, p. 15). The Secretary's finding with respect to the entirety of the election challenge was that "on the whole, the election was conducted in accordance with the law and the Union's Constitution," and accordingly the Secretary decided that the election should not be challenged. The Sadlowski slate then instituted an action in this Court seeking a ruling that the Secretary's failure to challenge the election was arbitrary and capricious. Judge Gasch granted summary judgment to defendants, *Sadlowski* v. *Marshall*, D.D.C. Civ. Ac. No. 78-0250 (February 8, 1979), and the Court of Appeals summarily affirmed, No. 79-1461 (November 30, 1979) (petition for rehearing pending).

7. USWA's field staff currently consists of 1103 employees, including hundreds of clerical employees. The largest job category is staff representative, with 625 employees. The current annual salary of each of the staff representatives, including all accumulated cost-of-living increases, is $27,837.

8. USWA's headquarters staff consists of 388 employees, spanning job categories from clericals to professionals (lawyers, economists, etc.) and department heads. Current salaries range from $16,817 to $41,299, including all accumulated cost-of-living increases.

/s/ Joseph Jeneske
JOSEPH JENESKE

[Letterhead Omitted in Printing]

October 20, 1976

TO: ALL USWA EMPLOYEES

Greetings:

An election of International Officers, District Directors and the National Director of Canada will be held on February 8, 1977. We wish to take this opportunity to reemphasize several long-standing Union policies with respect to International elections.

A. *Your right as a member of the Union*

1) All members of our Union have a right to contribute to the candidates of their choice and to campaign on their own time on behalf of the candidates of their choice. These rights belong to the employees of our Union just as they do to all other members.

2) No member of our Union, however, is required to contribute to any candidate, or to campaign for any candidate, and this is just as true for employees of our Union as it is for all other members.

3) No employee of our Union can be disciplined or subjected to any form of reprisal because he or she contributes to a candidate or does not contribute to a candidate, or because he or she campaigns on personal time for a candidate or does not campaign for any candidate.

B. *Prohibition against use of Union Funds or Property*

You are reminded that Part IV of the International Union Elections Manual provides that neither International nor Local Union funds may be expended in sup-

port of any candidate. As the Manual states: "This means of course, that no money from the International or any Local Union treasury or *any Union equipment or supplies* may be used to support any candidate." (Manual, pages 55-56)

In addition, Section 401(g) of the Landrum-Griffin Act provides in part that:

> "No moneys received by any labor organization by way of dues, assessments, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this Title."

Thus, neither International nor Local Union equipment or supplies such as xerox machines, duplicating machines, typewriters, stationery or mimeograph paper may be used for campaign purposes. Likewise, neither International nor Local Union offices or publications may be used for any campaign purposes. Nor should International or Local Union halls be used for campaign events unless the same fee is charged for the campaign event as would be charged to any non-union, commercial renter, and the hall is equally available to all candidates on the same terms.

Though some of these requirements may seem petty, they are required both by our Manual and the Landrum-Griffin Act. Even minor violations can endanger the election. You should be aware, for example, that the Labor Department sued one of our Local Unions, and won a court-ordered new election, because one candidate for office xeroxed a leaflet on a union xerox machine. Although the "value" of the xeroxing was only $13.00, the court held that this improper use of union resources might have affected the outcome of the election. Decisions such as this make it important that in *any* election—whether conducted at the Local level or the International level—there be no use of Union facilities for campaign purposes.

C. *Additional requirements under the Landrum-Griffin Act*

Your attention is directed to the fact that Section 401 (g) of the Landrum-Griffin Act, quoted above, applies not only to funds or property of the United Steelworkers of America but to funds and facilities of *all other unions.* Thus, for example, the Labor Department recently challenged a USWA election partly on the basis that a few supporters of one candidate had occasionally used a small office of another union for strategy meetings without paying a fair rental for the office. The restriction applies to any facilities, equipment, supplies or funds of any other union.

Similarly, Section 401(g) provides that all employer contributions to union election campaigns are unlawful even when the employer involved is not one with whom the Union has a collective bargaining relationship.

D. *Information and lists obtained from Union records*

In the past, the Union has from time-to-time received requests from candidates for lists of members or local union officers or for various types of other information. The International Union's consistent response to such requests has been to provide the candidates with a list of the names and addresses of all Local Union Recording Secretaries and, at the request of any candidate, to mail literature at such candidate's expense to the entire electorate for the office in question or to the entire membership of designated Local Unions.

The International Union has, at the same time, consistently denied all requests for additional lists or information. This policy is both fair and logical. If the International responded favorably to the particular requests of each candidate, it would be under a continuing obligation to supply every other candidate with each additional item of information sought and received by

each succeeding candidate. Otherwise, there would be claims of unfair treatment. Having in mind that there may be as many as 100 candidates seeking nomination for the various offices, and that each candidate may have a different view as to the information he or she would like the International to furnish, it becomes apparent that chaos could result if the International Union did not adhere to a firm, consistent and fair policy. Hence, we provide all candidates with the same information and the same mailing service, described above.

We are aware of the fact that there may be union records of various kinds available to some candidates by virtue of their positions as officers or employees of either the International Union or Local Unions. We want to stress once again that union records, whether they be International records or Local Union records, are not to be used in any way for campaign purposes.

In order that no candidate's election will be jeopardized by the intentional or inadvertent use of union records, we suggest that all records which might contain membership lists, lists of local union officers or other information which would benefit a candidate be placed under lock and key for the duration of the election campaign and that access to such records be limited, in terms of personnel, times and circumstances, in such fashion as to insure that no one can use such records for campaign purposes, or can be alleged to have used them for such purposes.

If, despite these precautions, such records are used for campaign purposes, the International Secretary-Treasurer must be immediately notified. In such event, consistent with the Union's policy and the requirements of law, such records will immediately be made equally available to the opponents of the candidate in whose behalf such records were used.

The foregoing does not apply, of course, to any lists or information compiled by a candidate and his supporters

through their own efforts and without recourse to records or files of the International Union or any Local Union.

A copy of this letter is being sent to each announced candidate in the forthcoming International election.

Sincerely yours,

/s/ I. W. Abel,
President

cc: Walter J. Burke
John S. Johns
Neon Lynch
National Director of Canada
District Directors

JENESKE--APPENDIX B

August 15, 1976

TO: SOC EXECUTIVE BOARD MEMBERS,
DISTRICT REPRESENTATIVES AND
ALL MEMBERS OF SOC

Dear Member:

For several weeks now, I have been getting inquiries from SOC members in connection with the forthcoming International Union elections. Most questions deal with the rights of individual staffmen and the extent to which these rights are protected under the SOC-USWA collective agreement.

I would draw your attention to Article II, Section 3 of our Constitution which sets out in clear and unequivocal language the position of the Staffman's Organizing Committee regarding the involvement of SOC members in elections of the International Union:

> "Section 3.
>
> Staffman's Organizing Committee shall not and must not participate as an Organization in any election within the International Union of the United Steelworkers of America by endorsement, statement or otherwise. However, SOC members may exercise their personal right to act in accordance with their own convictions in such elections."

The following position is reiterated in the preamble to our collective bargaining agreement:

> ". . . . Accordingly, SOC makes this Agreement in its capacity as the exclusive collective bargaining representative of such employees and reiterates the

following declaration adopted by SOC upon its formation on December 15, 1964:

> "Firmly and unequivocally we declare that SOC shall not and must not participate as an organization in any election within the International Union by endorsement, statement or otherwise. Individual Staffmen, may, of course, exercise their personal right to act in accordance with their own convictions in such elections."

So that there is no misunderstanding, SOC's policy is in complete accord with the pronouncements found in President Abel's letter of October 2, 1974, addressed to all employees of the International Union. You will recall, in that letter, his three point declaration of membership and employee rights relating to International Union elections:

> "1) Every member of our Union has a right to contribute to the candidate of his choice and to campaign on his own time on behalf of the candidate of his choice. These rights belong to the employees of our Union just as they do to all other members.
>
> 2) No member of our Union, however, is required to contribute to any candidate, or to campaign for any candidate, and this is just as true for employees of our Union as it is for all other members.
>
> 3) No employee of our Union can be disciplined, or subjected to any form of reprisal, because he contributes to a candidate, or because he does not contribute to a candidate, or because he campaigns on personal time for a candidate, or because he does not campaign for any candidate."

Accordingly, if any member of SOC feels that they are being intimidated, or that his or her rights are threatened by a violation of these announced policies, the mat-

ter should be brought to the attention of SOC's officers without delay.

Yours fraternally,

/s/ Andrew W. Kemec
ANDREW W. KMEC,
President, Staffman's Organizing Committee

AWK:mg

cc: Forrest G. Reeder
J. Bud Entinger

AFFIDAVIT OF JAMES SMITH

JAMES SMITH, being duly sworn, deposes and says:

1. I am an Assistant to the President of the United Steelworkers of America, AFL-CIO-CLC (hereinafter "USWA"), and currently serve as Acting Head of USWA's Research Department. In the latter capacity, I was asked by USWA's attorneys in this lawsuit to assemble available data on the earnings of USWA members. USWA does not receive reports from employers showing the precise earnings of each employee represented by USWA. Nevertheless, it is possible, through analysis of existing data, to present a relatively accurate picture of earnings in five of the industries whose employees are represented by USWA.

2. The Bureau of Labor Statistics of the U.S. Department of Labor publishes a monthly report showing, *inter alia*, the average weekly earnings of production and maintenance workers in a number of industries, including the steel, aluminum, metal cans, iron ore and copper industries whose workers are represented by USWA. The latest published figures relate to the month of September, 1979. By adjusting these figures to reflect a cost-of-living increase received by workers in all these industries since the last-published BLS data, and multiplying by 52 to derive an annualized figure, the average annual earnings of production and maintenance workers in these industries currently are as follows:

Steel:	$23,786
Primary Aluminum:	22,423
Metal Cans:	22,540
Iron Ore:	21,729
Copper Ore:	22,333

These figures will likely increase substantially between now and the next USWA election in May 1981, for two reasons: (1) as the Consumer Price Index increases, workers in each of these industries receive quarterly cost-of-living increases pursuant to the collective bargaining agreements which USWA has negotiated and with the employers in each of these industries; and (2) USWA will enter into triennial negotiations with the employers in each of these industries in 1980, and unless the results of these negotiations differ markedly from those in other industries throughout America during the past year, the outcome will be very substantial wage increases for all employees.

3. The figures in the proceeding paragraph are industry-wide *averages*, and do not reflect the *range* of earnings from which the average was derived. In the steel industry, it is possible to take the first step toward constructing such a range, because we know the population employed in each of the 33 job classes in the steel industry, and we know the percentage differential between hourly rates in each of these job classes. Using the $23,786 *average* figure derived from BLS data (Paragraph 2 above), and constructing a matrix on the basis of job class populations and percentage differentials between job classes, produces the following range of annual earnings (assuming a full year of work) for the 340,000 production and maintenance employees in the steel industry:

Annual Earnings Range	No. of Employees
Below $20,000	20,400
20,000 to 21,999	28,900
22,000 to 23,999	136,500
24,000 to 25,999	115,700
26,000 to 27,999	30,500
28,000 to 29,999	5,600
30,000 and up	2,400
Total P&M Membership, Basic Steel	340,000

This approach is not precise, because it fails to control for two variables for which there are no published data: (1) this approach assumes that all employees work the same number of hours per week, whereas we know from experience that some employees perform extensive overtime and others do not; and (2) this approach assumes that all employees receive the same incentive yield, whereas we know from experience that incentive yields vary normously from plant to plant and from job to job within each plant. If it were possible to refine the range by taking these two variables into account—and it is not, because precise data are not available—the result would be a substantial increase in the number of employees at the top and bottom steps of the range, and a reduction in the number of employees at the middle steps of the range. My own personal knowledge, based upon numerous contacts with steel industry local unions throughout the United States, is that in fact the number of steel industry employees earning in excess of $30,000 per year greatly exceeds the figure (2,400) which results without consideration of individual overtime and incentive data. Thus, at every major steel plant, there are innumerable employees who, by virtue of substantial overtime and high incentive rates, earn well over $30,000 per year—indeed, large numbers earn well over $40,000 per year.

4. It is not possible to construct a range for the aluminum, metal cans, iron ore, and copper industries comparable to that shown in Paragraph 3 for the steel industry, because we do not have data in these industries on population by job class. Thus, for these industries, the only data we have is the *average* earnings of all production and maintenance employees shown in Paragraph 2 above. That average is composed of employees earning substantially more than the average, as well as employees earning substantially less.

/s/ James W. Smith
JAMES W. SMITH

AFFIDAVIT OF DAVID ROOP

State of Michigan
County of Wayne

David Roop, being duly sworn, deposes and says:

1. I am a member of Local 2659, United Steelworkers of America (hereinafter "USWA"), located within District 29 of the Union. My local consists of the employees of McClouth Steel Company who are represented by USWA. I am presently the Recording Secretary of Local 2659.

2. During the 1977 election for International President of USWA, I supported the candidacy of Edward Sadlowski, Jr.

3. District 29 of USWA includes the State of Michigan the Northwestern portion of the State of Ohio. For many years, Charles Younglove has been the District Director of District 29. In early 1979, Younglove announced that he would retire at the end of his present term, and would not seek re-election in 1981. At that time, it was my view, as well as the view of some other local union people within District 29, that Staff Representative Harry Lester would be the best candidate to succeed Younglove. A few of us went to Lester and urged him to become a candidate. The group making this request included only local union members of USWA; none of us was an International officer or employee. Lester told us that he would be willing to run only if we could demonstrate that he would have substantial membership support. He indicated that, in order to run, it would be necessary to obtain financial support from USWA members, and that we would have to demonstrate to him that such financial support could be obtained.

4. In response to this challenge, a number of USWA rank and file members—none of whom was an Inter-

national officer or employee—formed the "Committee to Draft Harry Lester", and undertook a preliminary fund-raising drive. Although it was nearly two years before the 1981 election, we quickly raised approximately $5,000 in contributions. This early showing of membership support convinced Lester that he could be a viable candidate, and on September 17, 1979, he announced his candidacy at a press conference.

5. Following Lester's announcement, we renamed our Committee the "Committee to Elect Harry Lester." I am the Chairperson of the Committee. The Committee also has a Vice-Chairperson, Treasurer, Financial Secretary, and Correspondence Secretary. The Committee has active chapters throughout District 29. Without exception, the officers and active workers on the Committee are local union people; there are no International officers or employees in such positions.

6. To this date, no International officer has endorsed Harry Lester's candidacy, and the District Director Younglove has not endorsed Lester's candidacy either. We have no way of knowing whether Lester's candidacy ultimately will be favored by anyone in the International leadership, and in launching our campaign for Lester's election we have not counted on any such endorsement. Our campaign for Harry Lester began as a rank and file campaign, and we expect that it will remain that way.

7. There are more than 30 staff representatives within District 29. So far, five of these have announced their support for Harry Lester. While we are hopeful that a couple more may do so in the future, we have no knowledge that the rest of the staff representatives within District 29 will endorse Lester's candidacy.

8. To date, our Committee has raised over $14,000 in contributions for Lester, all from USWA members within District 29. This money has come in the form of direct

contributions, purchases of raffle tickets, and purchases of jackets endorsing Lester. Our fund-raising has been conducted strictly in accordance with the requirements of the USWA Constitution, including Article V, Section 27. To be sure that these requirements are met, we have furnished each pesron working on behalf of our Committee with a copy of the atached rules. Of the more than $14,000 raised so far, only a few hundred dollars have been contributed by the staff representatives supporting Lester, and over 95% of the contributions have come from rank and file local union people.

9. Our next major fund-raising event is a dinner scheduled for Valentine's Day. We project that by the conclusion of that dinner, we will have raised close to $30,000 in contributions to Lester's campaign—all from USWA members within District 29.

10. Our goal is to raise $80,000 by the end of the campaign (May, 1981). One fund-raising device which we are using is to ask local union members to sign pledge cards agreeing to donate $10 a month to Lester's campaign for the duration of the campaign. So far, we have received such pledges from 100 local union members within District 29; our target, which we are confident we will meet, is to have 400 members making such pledges by April 1, 1980. Of these 400, we expect that only five or six will be staff representatives; the remainder will be local union people.

11. The ability of USWA members to make contributions in these amounts stems, in part, from the fact that steelworkers receive substantial earnings. In our plant, for example, there are many USWA members earning over $40,000 per year, and many more earning over $30,000 per year.

/s/ David Roop
DAVID ROOP

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

COME NOW, Plaintiffs and move this Court pursuant to Rule 56, Federal Rules of Civil Procedure, to enter summary judgment on their behalf. In support of their Motion, Plaintiffs state as follows:

1. As shown by Plaintiffs' Statement of Material Facts as to Which Is No Genuine Dispute filed pursuant to Local Rule 1-9(h) and the supporting Affidavits and Exhibits, there are no genuine disputes of facts material to Plaintiffs' entitlement to prevail.

2. Plaintiffs are entitled to judgment as a matter of law, for the reasons explained in detail in Plaintiffs' Memorandum.

WHEREFORE, Plaintiffs pray that summary judgment be entered for all Plaintiffs against Defendants United Steelworkers of America and Secretary of Labor F. Ray Marshall.

[Signatures Omitted in Printing]

PLAINTIFFS' SUPPORTING AFFIDAVITS AND EXHIBITS

AFFIDAVIT OF EDWARD SADLOWSKI, JR.

Cook County
State of Illinois

The undersigned, being duly sworn, vountarily deposes and states as follows:

1. My name is Edward Sadlowski, Jr., I am a Plaintiff in this lawsuit.

2. Before the Complaint was filed in this suit, I reviewed the factual allegations recited in it. Since the Complaint was filed, I have again reviewed the factual statements contained in it. I believed then and believe now that the factual allegations regarding my membership and various election contests and events and support I received in those elections are all true and correct to the best of my knowledge and belief.

3. In 1973, when I initially ran for the District Director of USWA District 31 against the "official family" candidate, Sam Evett, I was a member of the USWA Staff in District 31. At that time, there were approximately 60 members of the staff assigned to District 31; of this number, only one member of the staff in District 31 my candidacy. The balance of the staff in District 31 actively supported the election campaign of Sam Evett.

4. As noted in the Complaint, the "official family" determined that Evett had defeated me. I challenged the election within the USWA, and thereafter, with the assistance of Joseph L. Rauh, Jr., initiated a complaint

challenging the election with the Secretary of Labor. After the Secretary of Labor filed suit against the USWA and I intervened in that action (represented by Mr. Rauh), the USWA consented to rerun the District 31 election and Evett and I ran against each other again. During that election, my campaign expended approximately $25,000 to $30,000. My campaign funds were raised from among members of the USWA as well as through contributions made to me by friends, family, acquaintances and supporters who were not members of the Steelworkers. By contrast, Evett's efforts to raise campaign money among the rank and file members of the USWA were minuscule compared to mine. Evett's campaign was financed almost entirely by "contributions" from the highest officials in the USWA including President I. W. Abel and virtually all of the District Directors, as well as contributions from staff throughout the United States who were "dunned" by the "official family". I was unable to come close to matching the large sums obtained by Evett from USWA staff and officers. Despite being outspent by a considerable margin, my candidacy in the rerun election was successful and I defeated Evett by a two to one margin.

5. In late 1974, I was installed as District Director of District 31, the largest District within the United Steelworkers of America. USWA President and titular head of the "official family" I. W. Abel immediately appointed defeated candidate Sam Evett to a newly-created position as Special Assistant to the President. A new office was set up for Evett within District 31 in Chicago. Following my election I suggested to Abel the names of several individuals to fill vacancies on the staff of District 31. While District Directors in the USWA normally have the effective power to appoint staff in their Districts, Abel refused to appoint anyone I recommended. Rather, Abel made several appointments to the staff of District 31 without my knowledge, approval or recommendation. In

each instance, the individuals he appointed had opposed my candidacy.

6. During my campaigns for District Director and later when I campaigned for the USWA Presidency, I recognized the serious problem of attempting to raise funds from among rank and file members of the USWA. The problem is essentially a logistical one. Although a large percentage of USWA members, like their counterparts in any other socio-economic group, are unwilling to make financial contributions to a 7 kind of election campaign, those who can and are willing to contribute to a candidate for union office often cannot afford to make a contribution beyond a few dollars. Because the average contribution per member is quite small, a direct mail solicitation to all members of a particular district is not financially practical. In other words, the amounts received through a direct mail solicitation of all members in a particular district would probably not pay the cost of the mailing. For example, anyone making a direct mail solicitation to District 31 members would expend at least $25,000 to $40,000 in postage, printing and handling charges. Regardless of the candidate involved, I do not believe that any such effort would generate more than a few thousand dollars in contributions and, therefore, a substantial net loss.

To my knowledge, there are no lists of USWA members who are known contributors which are available for use by anyone. Consequently, most of the fund raising among rank and file members is ordinarily done on a face to face, personal basis through any one of the following techniques: holding raffles or bingo games, holding dinners or beer busts, holding campaign rallies and passing the hat, selling jackets or the like, and through other personal requests. I utilized all of these methods to raise money from among the rank and file when I ran for the USWA Presidency in 1976 and 1977.

7. During my campaign for the USWA Presidency, three of my four running mates, namely Marvin Weinstock, Andy Kmec and Oliver Montgomery were all members of the USWA staff. Despite this fact, our slate received virtually no financial or other support from among the USWA's appointed staff and employees. At best, no more than 3 percent of the nearly 1500 employees and staff of the USWA supported our candidacies. In several districts, the staff unanimously contributed to the McBride campaign and unanimously opposed our candidacies.

8. During the course of the 1976-77 election campaign, as a result of litigation between our campaign and the McBride campaign, both candidates had the opportunity to inspect the list of campaign contributors to the other's campaign. As a result of reviewing the contributions made to the McBride campaign, my campaign staff informed me that approximately 90 percent of all of McBride's campaign receipts came from the Officers and USWA Staff. In most instances, the contributions made by staff members were uniform, for example, $500 per person. In other instances, payments to the McBride campaign by staff were made on an installment plan. According to the information we reviewed regarding McBride's campaign receipts, the USWA's officers and more than one-third of the USWA's appointed staff had contributed more than $160,000 to McBride's campaign as of one month before the election which was held in February, 1977.

9. By contrast, even though I was an elected officer and three of my running mates were staff members, we received less than $5,000 in contributions from staff. Of this amount, my recollection is that Pat Coyne, an employee in the USWA's Headquarters contributed $1,000, the largest amount.

10. In order to conduct an effective campaign and to offset the massive campaign receipts and expenditures

made by the McBride slate, our slate arranged for and made fund raising mailings to names of persons on lists of liberal and pro-labor contributors we had purchased or obtained from various organizations. The most effective of the mail solicitations was a letter sent by Victor Reuther, brother of former United Auto Workers President Walter Reuther.

11. During the final months of the 1976-77 campaign, McBride and his slate made our fund raising efforts the principal campaign issue. Despite McBride's assertion that our campaign had received monies from non-members and "employers", neither McBride, his counsel, Bruce Miller, nor anyone in his campaign ever demonstrated or established a single instance where my campaign had accepted funds which had been made by any company, partnership, business, or business related bank account or funds. (The press, however, showed that in at least one instance a law firm employed by the USWA had made a $1,000 contribution to McBride from its business account). Despite the widespread newspaper and other media coverage of McBride's allegations that our campaign had solicited and received "outside" contributions, by McBride's own count, more than a quarter million USWA members were not swayed and voted for me. Within the United States, where there was some semblance of electoral honesty, McBride's own tabulation of the votes shows that he barely defeated me. It is generally acknowledged that within the basic steel industry, my running mates and I defeated the McBride slate based upon their tabulation of the ballots.

12. Although only a few staff people supported our challenge to the "official family" several of them have been the victims of either overt or subtle political retribution. John Powderly, an Assistant Education Director who had lived and been based in Pittsburgh for years, was suddenly transferred to Washington, D.C. Pat Coyne, who had been employed in the USWA's Research

Department had contributed $1,000 to our campaign, was fired following the election. The suit challenging his termination is, to the best of my knowledge, still pending. Oliver Montgomery, my running mate has been removed from participation in certain negotiations in which he had previously been involved. My other running mate, Marvin Weinstock, has remained on the staff but he has been loaded up and assigned more locals to service than any other staff man in his District.

13. Although it is true that USWA staff are represented in collective bargaining by the Staff Organizing Committee (SOC), staff members who believe they have been victims of political retaliation are reluctant to initiate grievances over such action because the very same staff that overwhelmingly supports the "official family" in union elections also, in most instances, decides the policies of the SOC.

14. I have no doubt whatsoever that the "outsider" rule was conceived and implemented by McBride and his supporters to assure that neither I nor any other candidate could mount in the future an effective campaign against the "official family" either internationally or within any particular USWA District.

15. I may again be a candidate for International office within the USWA. However, if the ban on "outside" contributions remains in effect, it will greatly influence whether I (or anyone else from among my supporters) will declare our candidacies for any International offices. At the present time, it is unlikely that I will be a candidate if the "rule" remains in effect.

16. I have reviewed the letter appended to the Affidavit of Lynn Williams which I authored and sent to employees of Desa Industries. My letter was a response to anti-union propaganda distributed by Desa which attempted to discredit the USWA and me by purportedly citing statements I had made in my campaign for the USWA Presidency.

17. I have read the Affidavit of USWA International Secretary Lynn Williams. I do not have access to information or any way other than discovery in this suit to respond to the following portions of Williams' Affidavit:

(a) The circumstances, dates, etc. surrounding the drafting and preparation of Art. V, Section 27 and the Regulations, and the persons involved in this process;

(b) The process by which the "official family" generated the submission of local union resolutions regarding the "outsider" issue;

(c) The steps taken to obtain Executive Board and Constitution Committee approval; and

(d) The background regarding the selection of Contribution Committee members and the relationship between those persons and present and former "official family" members.

Based upon my experience in the USWA and the limited information available to me, I believe that discovery in this case will ultimately show:

(1) That the impetus for enactment of the "outsider" rule came from McBride and his closest political advisors;

(2) That McBride and his closest advisors developed the rule for the principal purpose of deterring or preventing me from seeking the USWA Presidency again;

(3) That the basic outline, if not the complete text of the rule and regulation, had been developed well in advance of the 1978 Convention;

(4) That the resolutions submitted by local unions regarding outside contributions were solicited, written and, in some instances, typed by International or

District staff and personnel to make it *appear* that impetus for adoption of the "rule" had come from the members;

(5) That the members of the Contribution Committee, Wirtz, Springer and Lewis were chosen by McBride, Williams and their closest advisors and not by the Union's Executive Board as the Constitution requires. Indeed, Williams' Affidavit announcing the appointment is dated December 21, 1979; but the appointments, according to the press release attached as Exhibit A, were not made by the Executive Board until January 18, 1980, a month later. By itself, this fact weighs heavily against any contention that these individuals were not picked by and will be partial to McBride and the "official family".

(6) That the USWA offered the Contribution Committee positions to a number of persons who refused to serve. By the express terms of Article V, Section 27, the Committee's term was to begin May 1, 1979, but a number of prominent people declined to "front" for McBride and the "official family" by accepting such appointments;

(7) That when one carefully reviews the personal relationships of the appointees and USWA officials, promises made and the amount of per diem payments or salaries to be paid, it will disclose a lack of impartiality by members of the Committee.

18. I have also read the Affidavit of David Roop. Although I have serious doubts as to whether the facts contained in the affidavit tell the entire story, I cannot obtain access to that information without counsel taking depositions of Roop, Harry Lester and others. My knowledge of the facts is that Harry Lester has been on the staff of District 29 for a number of years. He did not support my candidacy. He was and/or is the assistant

and right-hand man of District Director Younglove, who has announced his retirement at the end of his present term. Several other staff members have declared or are rumored to be candidates. Younglove, for purposes of maintaining harmony, has not thrown his support to any candidate. I expect that discovery will show that Lester has the unofficial backing of McBride and the "official family" and the he is closely connected to McBride and some of McBride's closest advisors. Finally, I believe that a detailed review of Lester's campaign financing will not fully support the statement that the fund raising "has been conducted strictly in conformity with the requirements of the USWA Constitution, including Article V, Section 27", nor do I believe that the projection of campaign receipts is realistic.

I have read the foregoing Affidavit and reviewed the Complaint filed in this action and believe that the facts stated herein and in the Complaint are true and correct to the best of my knowledge and belief.

/s/ Edward Sadlowski, Jr.
EDWARD SADLOWSKI, JR.

SADLOWSKI—EXHIBIT A

News from the
STEELWORKERS

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC
Five Gateway Center, Pittsburgh, Pa. 15222
Phone 412-562-2666

Russ Gibbons, Director of Public Relations

FOR RELEASE
FRIDAY A.M. JANUARY 18, 1980

Pittsburgh, Pa., January 18—Three distinguished lawyers from outside the United Steelworkers of America have been named by the International Executive Board to help protect the rights of USWA members to elect their International Officers and district directors free from outside interfere.

The three are Willard Wirtz, who will serve as chairman of the Campaign Contribution Administrative Committee, and Eric W. Springer and David Lewis, who will serve as members of that body.

The Committee is being established under a mandate from delegates to the USWA's 19th Constitutional Convention in 1978. Delegates meeting in Atlantic City, N.J. adopted by a wide margin a new union constitutional provision banning the use of money and other support from outside the union in the election of its top officers and directors.

The provision and implementing regulations bar the solicitation and acceptance of non-member donations and support, and established rules governing the conduct of candidates for office regardless of the solicitation and acceptance of aid. The Campaign Contribution Administrative Committee will monitor campaign expenses and

contributions, as well as enforce the rules adopted by the delegates.

The new Constitutional provision prohibits any candidate or prospective candidate for director or International Office from soliciting or accepting any financial or other support—direct or indirect—from any non-member in his or her race for election, except a non-member's own volunteered personal time. The ban on soliciting or accepting such contributions extends to supporters of candidates and prospective candidates as well.

The USWA is one of the few American unions—and the only one of its size—to elect its International Officers and board members by secret ballot of its membership. Most unions elect their top officers by vote of delegates in convention.

The delegates to the 1978 Steelworkers Convention have determined that outside involvement in the union's election is against the best interest of USWA members. Accordingly, with one minor exception, any kind of support from a non-member cannot be used in an election campaign. A non-member is defined in the rules as a person who is not eligible for membership or not in good standing, and includes any foundation, corporation or other entity whose funds are at least partly derived from any person not eligible or not in good standing.

The sole exception to the ban is the volunteered personal time of a non-member. Candidates may, of course, purchase goods and services from non-members at normal commercial cost for use in their election campaigns. The three lawyers who will enforce these rules are not only distinguished but exceptionally experienced in the field of labor relations.

Chairman Wirtz served as United States Secretary of Labor from 1962 to 1969 in the cabinets of Presidents Kennedy and Johnson. A Harvard Law School graduate, Wirtz is now a Washington attorney—a partner in the firm of Wirtz and Lapointe. His long experience in-

cludes service as general counsel of the War Labor Board during World War II and as chairman of the National Wage Stabilization Board after the war, among many other activities.

Previously a teacher of law at the University of Iowa and at Northwestern University, Wirtz is widely experienced in arbitration. He is chairman of the board of the National Manpower Institute.

Commission member Springer is a graduate of the New York University School of Law and is presently a practicing attorney in Pittsburgh. For many years, his specialty has been health and hospital law and he is a widely-known expert in the health care field. Springer has taught courses in hospital administration, serves as an adjunct professor of hospital law at the University of Pittsburgh and has authored numerous articles concerning the role of the law in connection with health care.

In addition, he served as chairman of the City of Pittsburgh's Human Relations Commission at a time when that body was active in enforcing the city's ordinance banning discrimination in housing, employment and in places of public accommodation. He also served as director of compliance of the U.S. Equal Employment Opportunity Commission.

The third member of the panel, David Lewis, is a former Rhodes Scholar who served many years as a member of Canada's Parliament. He has held a number of positions—including national president and national secretary of Canada's Co-Operative Commonwealth Federation. He was one of the founders of that nation's New Democratic Party in 1961.

From 1962 until 1971, Lewis was deputy leader of his party in Parliament, and in 1971 he was elected federal leader of the NDP, a post he held until he resigned in 1975. Most recently, he has been a professor with the Institute of Canadian Studies at Carleton University in Ottawa.

AFFIDAVIT OF JOSEPH SAMARGIA

City of Gilbert
State of Minnesota

The undersigned being duly sworn voluntarily deposes and states as follows:

1. My name is Joseph Samargia. I am a member of the United Steelworkers of America and I am a Plaintiff in this lawsuit.

2. Before the Complaint was filed in court in this action, I had the opportunity to review it completely. I reviewed carefully those allegations regarding me. I believed then and believe now that those allegations are true and correct to the best of my knowledge and belief.

3. I am currently the President of Local Union 1938 of the United Steelworkers of America which is the largest Local Union in District 33 of the USWA.

4. Over the past several years I have become very active in USWA affairs. During the past few years, many members of the USWA have urged me to seek higher office within the union.

5. District 33 encompasses the States of Minnesota, Northern Michigan, Northern Wisconsin, North and South Dakota, as well as Montana and Wyoming.

6. In 1977, I supported the candidacy of Ed Sadlowski for USWA President. Our local campaign organization endorsed the candidacy of Linus Wampler against the incumbent District Director Peter J. Benzoni who had the full support of the USWA's hierarchy and "official family". The staff and employees of District 33 unanimously supported Benzoni's candidacy. After the election

in which Wampler defeated Benzoni, Wampler sought to fill three vacancies in the District staff and recommended to President Lloyd McBride my name along with two other USWA members. McBride refused to appoint anyone recommended by Wampler but instead designated three new staff all of whom had opposed Wampler's candidacy. The staff of District 33 remains 100% opposed to the leadership of Linus Wampler.

7. It is a virtual certainty that the "official family" will back a candidate for District Director of District 33 in the 1981 election.

8. Because of the vast geographical area encompassed by District 33, the cost of mounting a campaign for District Director is quite substantial. Specifically, the cost of travel, postage and telephone will be very high for a non-incumbent or candidate without staff support. Anyone who is a candidate for office who does not have the support of the staff will be required to raise funds and secure volunteer campaign assistance throughout this entire seven-state area. Although my preference would be to utilize only the services of USWA members in developing a campaign organization and to rely exclusively on contributions from USWA members if I choose to run, the practical reality is that any candidate not supported by the District Staff will surely be required to rely upon non-USWA members for contributions and to distribute his literature, to solicit funds, to organize an election day effort, and to otherwise conduct an effective campaign.

9. The "outsider" rule which was adopted at the 1978 Convention will make it very difficult if not impossible for a candidate who does not have the blessing of the "official family" to mount an effective campaign for District Director of District 33. For that reason, the single most important factor to me in determining whether or not I will seek office will be whether the "outsider" rule

remains in effect or whether it has been declared to be invalid.

I have read the foregoing Affidavit and believe it to be true and accurate to the best of my knowledge and belief.

/s/ Joseph Samargia
JOSEPH SAMARGIA

AFFIDAVIT OF JAMES BALANOFF

Lake County
State of Indiana

The undersigned being duly sworn voluntarily deposes and states as follows:

1. My name is James Balanoff. I live at 1447 Michigan Avenue, Hammond, Indiana. I am a member of the United Steelworkers of America and I am currently the Director of District 31, USWA, headquartered in East Chicago, Indiana. District 31 has the largest membership of any USWA District.

2. I first ran for the District 31 Directorship in 1977. When I ran for office in 1977, I ran on a ticket called "Steelworkers Fight Back" with Ed Sadlowski and his running mates all of whom were candidates for International offices within the USWA. My campaign platform was critical of the policies adopted and followed by the "official family" and the leadership of I.W. Abel and Lloyd McBride.

3. In the 1977 election for District Director for District 31, there were a total of 5 candidates including myself. During the early part of the election period, McBride and the "official family" urged District 31 USWA members to "vote for anyone but Balanoff." However, towards the end of the election campaign, McBride, the "official family" and the staff in District 31 threw their support to Harry Piasecki, who was a local officer. I defeated Piasecki and my 3 other opponents in the 1977 election and I was subsequently installed as District 31 Director.

4. On assuming office as District Director, I learned that anyone like myself who has bucked the "official family" could not expect to make or to effectively recom-

mend any staff appointments within the District he is responsible for running. Within the USWA, the power to hire and fire all employees of the union is exercised exclusively by the International President. District Directors who "play ball" with the President can effectively recommend persons to fill staff vacancies in their districts. I have on several occasions recommended persons for staff appointments; on every occasion, McBride has disregarded my suggestions. He has appointed 9 different staff people (including my election opponent, Piasecki) all of whom opposed my election.

5. Because of the International President's power to appoint and remove staff and his unlimited discretion to appoint only those staff persons who are loyal to him and the "official family," the USWA is a union which is run from the top down. District Directors ordinarily rely upon staff support to first get elected and thereafter to remain in office. As a result, most District Directors quickly fall into line and adopt and never question the policies announced by the union's International President. At present, there are only two District Directors throughout all of the USWA—Linus Wampler and I—who have not fallen into line behind President McBride and the "official family".

6. According to the 1978 Audit Reports prepared by the International Union, USWA, the Union's payroll included 429 officers and employees at USWA Headquarters, 1,142 regular personnel in the Districts plus an undetermined number of casual personnel. For the year 1978, the total salaries and expenses paid to all USWA personnel was $37,389,995.97. All apointed staff responsible for servicing local unions received in addition to their base salary $6.00 per day per diem for every day of the year plus additional expense allowances. Many appointed staff members submit and are paid expenses exceeding $10,000 per annum. The salary and expenses received by staff exceed the monies earned by many of our members.

7. The paid staff of the USWA are (almost without exception) the political foot soldiers of the "official family". The power and political muscle of the staff is all pervasive within the NSWA. There are several indisputable and obvious ways that their influence is exercised and felt. First, the appointed staff is a ready-made campaign organization, strategically located throughout the United States and Canada with close personal ties in virtually every local union. Secondly, the staff in the past has provided the principal source of campaign financing for "official family" candidates. Third, the staff has enormous power and influence at the USWA's Biennial Conventions. Analyses of the delegate credentials held by appointed USWA staff at the most recent USWA Conventions which has been performed under my direction, shows that between 20 to 25 percent of the delegates attending are USWA staff members. Because I cannot recall the last time a roll call vote was held at a USWA Convention, the staff has voted at Conventions in proportion to the number of delegates who attend during voice or standing votes. Appointed staff are also designated to serve on various Convention Committees where they, along with members of the "official family" and friendly local officers appointed by the President, assure control of the Convention Committees by the "official family". Finally, the staff can and does influence the Convention by circulating and soliciting resolutions proposed by the "official family" among various locals prior to the Convention.

8. I attended the 1978 USWA Convention which was held in Atlantic City in September of that year. At that time, I was a member of USWA's International Executive Board which met almost daily before and during the Convention. I was also a member of the Convention's Constitution Committee which was chaired by President McBride's running mate and International Secretary, Lynn Williams. The balance of the Constitution Committee was made up of several other District

Directors, all of whom were McBride's supporters and members of the "official family", some staff, and local officers friendly to McBride who had been elected as delegates.

9. By virtue of my position as District Director, member of the International Executive Board as well as member of the Constitution Committee, I was in a unique position to observe the behind the scenes maneuvering which resulted in the adoption of the so-called "outsider" rule. My recollection is that the USWA's International Executive Board was in Atlantic City during the week before the Convention convened. During that week, the Executive Board met at a breakfast meeting at which time the "outsider" rule was read to us by International Secretary Lynn Williams. Though I had some idea that McBride and his supporters would try to establish some kind of policy which would prevent Ed Sadlowski from challenging them again, the first time I heard about the outsider rule was at this breakfast meeting. To my surprise, a number of Board members in addition to me expressed initial opposition to the rule, including Lloyd McBride's successor as Director of District 34, Buddy Davis. After a number of negative comments and suggestions were made by members of the Board, Williams told us that the "lawyers have been working on this for months", indicating that he did not want any changes made in the rule as it had been presented. Two of McBride's most ardent spokesmen, Bruce Thrasher and Frank McKee, urged support of by the Board for the rule as it had been read by Williams. I was unable to see who had voted yes or no by standing up when the motion to approve the rule was called for but the motion to approve was adopted. A court reporter was present throughout this meeting; therefore, I am certain that a complete transcript exists regarding it.

10. After the Convention began, I believe that the Board met again and was presented with the complete

language which ultimately became Article V, Section 27 of the Constitution and the Regulations which were subsequently read to the entire Convention. It is my recollection that no change or modification whatsoever was made in Section 27 or in the Regulations by the Executive Board.

11. At or around the same time that I recall the International Executive Board being informed as to what would be presented to the Convention, it is my belief that the Constitution Committee was also presented with the language which had been read to the Board. The members of the Committee were told that more than 200 resolutions had been received on this subject. Virtually all of the resolutions came from 3 of the USWA's 25 Districts, namely, District 6, District 23, and District 37. Each of these Districts is thoroughly controlled by McBride. I have no doubt whatsoever that the number of resolutions as well as their form indicates that they were prepared by the "official family" and staff and that local support for these resolutions was solicited by the staff assigned to the respective locals whose officers signed the resolutions. The Constitution Committee was chaired by Lynn Williams and its Secretary was Leon Lynch both of whom ran on McBride's slate in the 1977 election. Except for myself and a few others, the balance of this 70-odd member Committee was packed with McBride's supporters who were District Directors, staff or loyal local union officers. There was hardly any discussion regarding the outsider rule before it was voted upon and adopted. I was one of the few people who voted "no".

12. Very soon after the Constitution Committee met and approved the new section presented to it by International Secretary Williams, the new section of the Constitution and Regulations were both read to the Convention. I attempted to speak against adoption of the rule and attempted to urge the delegates to send the matter

back to Committee for consideration of an alternate proposal which would have been modeled upon the federal act which provides for public financing of Presidential elections, but I was repeatedly interrupted by hoots and catcalls from the staff and other delegates. President McBride and other members of the official family personally endorsed the rule and urged the delegates to adopt it. In this atmosphere, McBride called for the question and ruled that a majority of the standing vote had voted in favor of adoption.

I have read the foregoing statement and believe it to be true and correct to the best of my knowledge and belief.

JAMES BALANOFF

AFFIDAVIT OF CLYDE W. SUMMERS

City of Philadelphia
Commonwealth of Pennsylvania

I, Clyde W. Summers, being duly sworn voluntarily deposes and states as follows:

1. My name is Clyde W. Summers. I am Professor of Law at the University of Pennsylvania. I have been in that position since September, 1975.

2. I have been studying and teaching labor law for more than thirty-five years. I received a Doctor of Laws degree from the University of Illinois in 1942. I later did graduate work in law at Columbia University, specializing in labor law, and particularly in the rights of union members in the internal processes of unions. I received degrees of Master of Laws and Doctor of the Science of Laws from Columbia.

I taught labor law, among other subjects, at the University of Toledo for six years, at the University of Buffalo for six years, and at Yale University for nineteen years, prior to going to the University of Pennsylvania. During these years, my primary teaching interest has been labor law and labor relations. Within that field my major scholarly research and writing has been on the internal affairs of unions and the democratic rights of union members.

3. I have written more than one hundred law review articles, monographs, symposia contributions, and other pieces on various aspects of labor law. At least a third have been related to internal union problems, and they include analysis of both legal and practical aspects of union government. The following are among those which are most closely related to union elections:

Democracy in Labor Unions, American Civil Liberties Union, 1952.

"Legislating Union Democracy," Proceedings, Tenth Annual Meeting, Industrial Relations Research Association (1957).

"The Usefulness of Law in Achieving Union Democracy," *Journal of the American Economic Association*, Vol. 48, p. 44 (1958).

"Judicial Intervention in Internal Union Disputes," *Buffalo Law Review*, Vol. 7, p. 405 (1958).

"The Role of Legislation in Internal Union Affairs," *Labor Law Journal*, March, 1959.

"Labor's Public Responsibility in Internal Union Affairs," in Symposium of National Institute of Labor Education (1960).

"Preemption And the Labor Reform Act—Dual Rights and Remedies," *Ohio State Law Journal*, Vol. 22, p. 119 (1961).

"Judicial Regulation of Union Elections," *Yale Law Journal*, Vol. 70, p. 1221 (1961).

"American Legislation for Union Democracy," *Modern Law Review*, Vol. 25, p. 273 (1962).

"Rights of Unions and Union Members," in *Rights of Americans*, (Ed. N. Dorsen, 1971), p. 591.

In addition, I acted as faculty advisor of a large study made by Yale Law School students of union elections entitled, Union Elections and the LMRDA: Thirteen Years of Use and Abuse, 81 Yale L.J. 407 (1972).

4. In all of my research, I have always tried first to learn what the union practices were and to understand

the practical problems. For me, the question has always been how the law responded to the realities of union life. For example, before I wrote a legal article on "The Right to Join a Union," 47 Col. L. Rev. 33 (1947), I researched and wrote "Admission Policies of Unions," 61 Q. J. Econ. 66 (1946); and before I wrote "Legal Limits on Union Discipline," 64 Harv. L. Rev. 109 (1951), I wrote "Disciplinary Powers of Unions," 3 Ind. & Lab. Rel. Rev. 483 (1950), and "Disciplinary Procedures of Unions," 4 Ind. & Lab. Rel. 15 (1950).

The same general principle of first learning union practices has been followed in writing on union elections. For example, the monograph "Democracy in Labor Unions," written for the American Civil Liberties Union was based on extensive discussions with union lawyers, union leaders and others personally familiar with the problems. The article on "Judicial Control of Union Elections" was based on studies of union election disputes in New York and a large number of interviews with lawyers and candidates involved in those elections. The large study published in the Yale Law Journal was based on hundreds of interviews across the country of Department of Labor officials, union lawyers, union officers and defeated candidates.

I might add that the study made by the Yale Law School students is considered by the Department of Labor itself as a definitive study and, as I am told, is required reading for all lawyers engaged in enforcing Title IV of the Landrum-Griffin Act. To my knowledge, the Department of Labor has never itself made an equivalent study.

5. I have frequently been consulted by individuals or groups who are campaigning for union office, or by their lawyers concerning problems or disputes arising out of election campaigns. These include, for example, the long battle during the 1950's in Local 88 of the Master, Mates and Pilots in New York City, the repeated contests in

the 1960's in District Council 9 of the Painters in New York City, the election contest in Local 6 of the Hotel and Restaurant Employees in New York City, and the National election contest for president of the International Union of Electrical Radio and Machine Workers.

I was involved at various stages in the election contest in the United Mine Workers. After the insurgents won, I prepared draft constitutions for the national union, the districts and the local unions. Those drafts were based on extensive discussions with union officers, members and lawyers, and in drafting those constitutions the most critical issue was guaranteeing a democratic election process.

I am on the board of directors of the Association for Union Democracy, an organization devoted to protecting the democratic processes in unions and the rights of union members. That organization is constantly involved in union election disputes, receiving complaints that union elections are not being properly conducted.

I served as Impartial Umpire for elections in the New Haven Musicians Union which had a membership of seven or eight hundred members. Both of the contesting factions asked me to serve, because they were unable to agree on how the election should be conducted. This required establishing detailed ground rules on every aspect of the election and enforcing those rules in a way that both factions would agree gave them equal opportunity to campaign and solicit votes.

6. In September, 1957, at the time of the McClellan Hearings investigating labor racketeering, I was named Chairman of the Governor's Committee on Improper Union-Management Practices by Governor Harriman of New York. Our charge was to recommend legislation to correct the abuses revealed by the McClellan Committee.

We held hearings, had a large number of informal discussions with labor lawyers and union officials, and

engaged in systematic research projects. The article, "Judicial Control of Union Elections," mentioned earlier, was one of the by-products of that work.

The first piece of legislation we recommended defined and enforced the fiduciary obligation of union officers, and it was adopted. The passage of federal legislation removed the demand for state legislation and we did not develop the planned drafts on other aspects, such as union elections.

In November, 1957, I was asked by Senator John Kennedy, to serve on a committee of experts to recommend legislation concerning internal union affairs. That committee, chaired by Professor Archibald Cox, prepared preliminary drafts of proposed legislation. These were fore-runners of what ultimately became the Landrum-Griffin Act. During this period I consulted from time to time with members of Senator Kennedy's staff concerning the wording of particular provisions in the statute. Much of this involved the provisions of Title IV dealing with union elections.

Also during this period I was a member of the labor committee of the American Civil Liberties Union which made proposals for legislation, including regulation of union elections. The ACLU proposals, published in a pamphlet entitled "A Labor Union Bill of Rights," was heavily borrowed from in bills submitted in Congress. In August, 1958, I prepared for the ACLU a criticism of the bill that has passed the Senate. Much of the criticism was directed at Title IV—Elections. When the bill was redrafted in 1959, most of the points criticized were corrected.

I might add that in May, 1958, I testified before the Senate Committee on Labor and Public Welfare concerning the proposed legislation.

7. I have been deeply concerned with problems of internal democracy in unions including the right of union

members, union elections and election campaigns, and financing of union elections for thirty-five years. I have studied these problems and written more concerning them than anyone else, especially any lawyer or legal scholar and am recognized as an authority in the area. One accumulates a lot of information and knowledge in that length of time. I have tried to read all I can which is related, but much is not written and one learns it through a multitude of contacts and experiences. I have been fortunate to know a number of people who have a wealth of practical experience in this area which they have shared with me.

8. Based on an accumulation of thirty-five years of study and experience in the field of internal union problems and union democratic processes which I have described, I believe that there are unique problems which are associated with union election campaigns and the financing of such campaigns.

I should emphasize that there has been no comprehensive study published on the methods by which union elections are financed. Much of the information is common knowledge to those familiar with what goes on in union election campaigns and who participates in those campaigns. Specific examples, however, are often hard to document because those involved do not want to talk for the record.

I would also want to emphasize that to the best of my knowledge the Department of Labor has made no systematic study of the financing of union campaigns. They have held no public hearings on the problem; so far as I know, they have made no effort to consult systematically a range of persons who might be specially informed; and I know of no effort to collect systematically the experience of those in their own regional offices who have direct contact with these problems.

9. The most sigificant characteristic distinguishing union elections from other types of elections is that

unions do not have a two party system. Only the International Typographical Union has two established parties which regularly present competing candidates. In all other unions the incumbent officers control what is commonly described as a one-party bureaucracy. They have control of the political machinery of the union through the appointed staff representatives, the union newspaper, and the administration of the collective agreement and other union affairs.

There is simply no practical possibility in most unions for any continuing stable opposition group which can be a competing political party. For this reason, union elections are frequently not contested.

Opposition groups in unions coalesce only when a substantial number of members become dissatisfied with the way in which the incumbent administration is conducting a union. Elections are contested when dissatisfaction is widespread enough that there is some hope of winning in spite of the advantages of the incumbents.

10. Incumbents in union elections also have marked advantages at four crucial points:

First, and most important, they have control of the paid staff of representatives or business agents who provide the back-bone of the incumbents' political organization. The paid staff owe their jobs to the officers, take orders from the officers, and can be dismissed by the officers. They have no practical protection from dismissal—there is no Hatch Act for union employees. The staff representatives are in constant contact with the members, handling grievances and providing other union services. In many cases, particularly when members are scattered in small numbers at many locations, the staff representatives are the voice and arms of the union. They have constant opportunity in their contacts with the members to extol the administration and to criticize the opposition, and they do it under the highly persuasive circumstances of dispensing services and benefits to the

members. Under the law, they are not to campaign during working time, but the Department of Labor's Regulations permits them to engage in "campaigning incidental to regular union business." For practical purposes, it is difficult to prohibit their engaging in anything other than the most blatant campaigning during normal working hours.

Second, the incumbent officers have control of the union newspaper. There is no such thing as a free and independent press within the union. The editor of the union newspaper is appointed by the officers and can be removed by the officers. The editorial policy and news stories are subject to the officers' control. The newspaper, paid for by the union dues and sent to every member at union expense, is regularly used to advocate the administration's policies, praise the work of the officers, and to publicize their pictures and activities. At the same time, it can be used to ridicule any criticism of the administration and discredit and potential opposition candidate. Indeed, a member who plans to run in opposition dare not become visible too soon lest he be destroyed before the campaign begins. The law prohibits the use of the newspaper to advocate the candidacy of any person, but in practical terms this prevents only the most open advocacy in the few months immediately prior to the election. This temporary restraint cannot erase the effects of constant praise and publicity during the three or four years between elections. Nor can opposition candidates erase the effects of earlier condemnations in the newspaper.

Third, the incumbents have ready access to the members. The officers can find excuses in official business to appear before the members and to contact members personally. They have opportunity and ability to develop names, addresses and telephone numbers of union members so they can mail out campaign literature or organize telephone campaigns. The law requires equal

access to membership lists, but there is no practical equality when the incumbent administration includes the secretary treasurer of the union.

Fourth, the officers have access to legal services, at the union's expense. In an election campaign there is need for constant legal advice, and often need for legal proceedings. The officers, while running for office, are also responsible for conducting the election. They can use the union's lawyer, paid from union funds, to handle practically all of the legal problems arising during the campaign.

11. These advantages of the incumbents are critical when one considers the financing of union election campaigns.

If neither side had any money for the election campaign, the incumbents' advantage would be so great that in large local unions or in international unions opposition candidates would have no chance of winning. Indeed, only the outraged or foolhardy would even try to run in opposition to the incumbents.

More specifically, the incumbent officers have a paid built-in campaign organization in the paid staff representatives. If opposition candidates are to make contacts in a large union, and particularly a scattered union, they will have telephone charges and travel expenses, have to rent meeting halls, and in many cases take off time from work to meet with members. To counteract the effects of the union newspaper, the opposition will have to print and distribute a large amount of campaign literature. Often it will try to publish a newspaper of its own. To find out the names and addresses of the members, the opposition will have to hire people to copy the membership list, and of course, pay for any mailings to the members. And the opposition will need legal help which will require payment of lawyer's fees, or finding a lawyer who will contribute his services.

In short, the incumbents can run a campaign with little or no money. The opposition cannot even get started without substantial funds, contributed either in cash or in kind.

12. Union election campaigns are financed differently depending upon whether the candidate is an incumbent or insurgent.

For the incumbents, particularly in large locals and in international unions, the largest single source is probably the paid staff. They are expected to contribute, or are assessed, and this is often a substantial amount—often several hundred dollars. In some cases they have been given a salary increase of as much as a $1,000, and then asked to contribute that amount to the campaign fund. Such contributions are not limited to business agents, but may extend to all employees, including secretaries and janitors. I would emphasize again that there is no Hatch Act for union employees. In most unions, this contribution system is informal, if not surreptitious, but it may be formalized. For example, in the Auto Workers there is a so-called "Flower Fund" made up of voluntary contributions from union employees and it is available for such political purposes, along with others.

The second major source of funds for incumbents probably is contributions from the union members. Here the incumbents have marked advantage over the opposition because they have had opportunities to render services or give favors in the past. More important, they have the paid staff representatives or business agents to solicit such contributions systematically by personal contact.

A third source of funds, normally disguised and indirect, is a testimonial dinner for an individual officer. The returns from the tickets to such a dinner and the advertising in the programs are designated as a gift to the individual for his service, but this gift provides him money to help finance his reelection campaign. The

amounts received may range from $5,000 to more than $50,000. Those who buy tickets or purchase advertisements include not only members and paid staff representatives, but those with whom the union does business.

13. Opposition candidates cannot obtain equivalent contributions from paid staff representatives. Nor can they raise substantial funds by testimonial dinners.

Opposition candidates customarily finance their campaigns in the first instance out of their own pockets and out of loans or gifts from friends. They get contributions from sympathetic union members, but at the beginning they may have few open supporters and they do not have a large organization to solicit contributions. They have to do enough publicizing and campaigning to make themselves appear as a viable candidate before they begin to get support from any substantial number of members. Even then, the individual contributions of members is inevitably small. Seldom is it enough to mount a really substantial campaign, and it is almost never enough to match the resources of the incumbents.

The opposition candidate must often rely in substantial measure on help from outside the union, from friends or those who are sympathetic with what he is doing. Almost always he will have to find a lawyer who will contribute his services without charge. He will have to find some person or organization which will give him free use of a meeting room and a printer who will print his campaign literature free or at reduced rates, and get other such help from the outside.

14. Union candidates' acceptance of money and other help from sources outside the union is a common and accepted practice. Members or officers of one union will often contribute to the election campaign in another union. For example, when insurgent groups in certain New York City unions were trying to oust alleged Communist leaders in the 1940's and 1950's leaders of other unions helped finance their campaigns. It was said that

the ILGWU gave money to the insurgents in District Council No. 9 of the Painters, among others. Later, other outside money was given to those who were trying to oust leaders in the same union who had become dictatorial and corrupt. Those who opposed and ultimately defeated President Carey of the International Union of Electrical Workers got help from those in other unions.

It is difficult to get hard evidence as to exactly who is contributing, but apparently the Auto Workers' "Flower Fund" has been used on a number of occasions to help insurgent candidates who were trying to defeat corrupt and undemocratic administrations. It reportedly contributed to the Miners for Democracy in their struggle to oust Tony Boyle in the United Mine Workers.

In the Steelworkers, it was reported that leaders of other unions contributed to Abel in his campaign against McDonald, and in the most recent election in the Steelworkers both sides reportedly got substantial contributions from outside. In the McBride-Sadlowski campaign in the Steelworkers, McBride's slate received contributions from current AFL-CIO President (former Secretary-Treasurer) Lane Kirkland, and officers of the Amalgamated Clothing Workers and ILGWU. More recently, USWA President McBride admitted that he and other Steelworkers' officers contributed money to mine workers' presidential candidate LeRoy Patterson.

Outside contributions in union election campaigns have also come from other sources. For many years, individuals or organizations interested in promoting honest and democratic unions have contributed to insurgent groups in unions which were trying to get rid of corrupt and oppressive union officers. These contributions took the form of cash donations, free legal services, free printing and free organizational work. For example, during the 1950's, the Association of Catholic Trade Unionists was active in a number of internal union struggles in New York City. It provided the major support for the in-

surgent group in Local 88 of the Master Mates and Pilots which finally defeated a dictatorial administration. Other church groups have been involved in less substantial measure.

The long struggle in the Mine Workers to oust Tony Boyle relied heavily on outside support. Much of the money for legal services to protect the rights of miners to a fair election came from foundation grants. Contributions came from a large number of individuals as a result of a broad public solicitation campaign on college campuses and elsewhere.

16. In almost every case, contributions from outsiders included contributions of services by lawyers representing opposition groups.

Rarely does an opposition group have enough money to pay a lawyer much more than out-of-pocket expenses. One of the difficult problems of insurgents is to find a competent lawyer who can and will contribute his services. In nearly every situation where an insurgent group has been successful there has been a dedicated lawyer who has contributed hundreds of man hours to the cause. In dollar value terms this has often been the largest single contribution to the campaign. Without this contribution, the opposition group would not have had the smallest chance of success in many cases.

17. Incumbents have also frequently obtained contributions or aid from outsiders, either other unions, individuals or organizations, although the amounts are probably smaller. Such contributions are, of course, much less important to the incumbents because they have less need of money and have more ability to raise money through the paid staff. Their outside money is more apt to come through personal gifts and testimonial dinners.

18. Up until the last two years no one, and I would emphasize no one, seriously suggested that there was

anything inappropriate about union candidates soliciting financial support from non-members. Of course, it would be inappropriate to take money from employers with whom the union bargained collectively or otherwise did business. Also, taking money from the Communist Party would place a stigma on a candidate.

Union constitutions placed no such restrictions on such contributions. In 1950, I examined the discipline procedures of some 180 international unions. They prohibited dual unionism, aiding employers, and many other offenses, but not one prohibited a candidate from seeking outside campaign contributions. Unions have punished all manner of conduct as "disloyalty" or "unbecoming conduct," but I know of not one single case of a member being disciplined for accepting such contributions.

Nothing in the McClellan Committee investigations pointed to such contributions as an evil, except for the concern with "sweetheart" deals in collective bargaining. Union Officers, and likewise candidates for union office, the hearings emphasized, should keep full arms length from employers with whom they dealt at the bargaining table. But there was not the slightest suggestion that campaign contributions from outsiders were per se improper.

The Ethical Practices Code on Union Democratic Processes, adopted by the AFL-CIO in 1957, contained provisions to guarantee free, fair and honest elections, but it does not prohibit outside contributions in election campaigns. At the time the Code was adopted there was no suggestion that all such contributions should be barred.

This acceptance of such contributions has not changed since the passage of the Landrum-Griffin Act. The Department of Labor has conducted a large number of elections under the Act, and those elections are, of course, required to be conducted in strict conformity with the Act. In many of those cases one or both of the candidates received financial support from outside sources, and

under circumstances in which the Department must have been aware of those sources. In the supervised mine workers' election in which Tony Boyle was defeated by insurgents who received substantial outside help, the candidates were required to and did file, pursuant to the Court's order, detailed reports listing contributions and expenditures. There is no evidence that the Department of Labor has ever sought itself to prohibit all such contributions. The exhaustive study of the Department's administration of the statute made in 1971-72 turned up no instance in which the Department either at the district or national level criticized or sought to curb such contributions.

Only within the last two years, has the Steelworkers placed such a restriction in its constitution, and this seems to be part of an effort of the administration to avoid any effective challenge by an opposition candidate in the future.

19. In my opinion, the practical effect of prohibiting all contributions to union election campaigns except those made by union members would be to gravely damage if not destroy the possibility of democratic elections in unions, particularly in large local unions and in international unions. The incumbent officers have such built-in advantages in union elections that they need no substantial financial contributions to insure their reelection. In addition, they have built-in methods of obtaining contributions from union members, particularly from paid staff representatives, business agents and employees.

If opposition groups are barred from getting any help from the outside, they can, in most situations, have no hopes of mounting an effective campaign. They will not even make enough of a beginning to present themselves as plausible candidates, and without that they cannot even create the base for obtaining contributions from other members. Running as an opposition candidate carries with it not only heavy burdens, but risks of reprisals

or ostracism. Those who support opposition candidates share those burdens and risks; most members will not join obviously lost causes.

The result is that there will be few opposition candidates when the prospect of success is hopeless. Elections will go uncontested, or contested only by token candidates. More important, elections will fail to serve even their most elementary purpose of revealing and measuring dissatisfaction in the union. Few will bother to criticize union policies when there is no hope of changing them; few will protest against their officer's ineffectiveness or corruption when there is no hope of removing them. If the opposition does not have something like an equal ability to campaign, the election results will misrepresent the membership. Elections will be uncontested even though there is substantial dissatisfaction, and incumbents will win by heavy majorities even though more than half of the members are dissatisfied with their performance. Many members will simply not bother to vote in what is obviously not a meaningful or fair process.

20 During the period of 1956 to 1959, when legislation on union democracy was being discussed prior to enactment of the Landrum-Griffin Act there was a general recognition of the difficulty of providing fair elections in unions because the incumbent officers enjoyed such great advantages. In 1956, the outstanding study on union government and union political process was published. This book, Union Democracy, by Lipset, Traw and Coleman pointed out that the two-party structure in the Printers Union was an aberration, and that the one-party structure was almost inevitable. It also pointed out the devices by which incumbent officers were able to perpetuate themselves in power, and the nearly insuperable advantages they had over opposition candidates. The study pointed out, for example, the great advantage incumbent officers had because of their control of the union newspaper and paid staff. These ideas became a part of

the public discussion of those concerned with possible legislation to protect and encourage union democracy. They were implicit in a variety of proposals which sought to strengthen the position of dissenting members or opposition groups vis a vis union officers. Indeed, it was the very root of what became Section 401(g) to prevent union officers from exploiting the advantage they had because of their control over union funds. Other provisions in the statute reflected the same concern of trying to equalize the positions of the incumbents and the opposition.

This problem was publicly acknowledged by the unions themselves. They accepted the principle that the officers should not be able to use union funds to get reelected. The one criticism of a blanket prohibition of the use of union funds was that in some circumstances it would work to the disadvantage of the opposition. A.J. Hayes, President of the Machinists, and Chairman of the AFL-CIO Ethical Practices Committee, pointed out that in elections for national office, opposition candidates often relied on funds from local unions who opposed the national officers. He testified before the Senate Committee—

> "It has been the policy of our organization ever since its existence that no national or international officer could use the money of the organization in connection with his campaign for office . . .
>
> However, I believe it would be very unfair to a member of local lodges who may be opposed to me, as international president, and who may want to promote opposition to me in the next election, if they could not financially support the candidate of their choice.
>
> It seems to me that a prohibition against national or international union officers using the money of the organization in connection with their campaigns, is good; I favor that.

However, the prohibition should not extend to local or district lodges because if this proposal became a law, the incumbent in office would have a tremendous advantage."

(Hearings before the Subcommittee on Labor of the Committee on Labor and Public Welfare, U.S. Senate, 85th Cong. 2d Sess. on Union Financial and Administrative Practices Procedures, May 8, 1958, page 538).

21. Having studied the Steelworker rule barring the acceptance of campaign contributions or assistance from nonmembers and the "regulations" implementing it, it is my opinion that the rule will effectively eliminate any meaningful contests for the five International offices within the USWA. With respect to District Director elections, the rule will virtually assure that no opposition candidates will be able to mount successful challenges against any incumbent director. In this respect, the rule virtually guarantees that incumbents will be insulated from electoral challenge.

I have read the foregoing affidavit and it is true and correct to the best of my knowledge and belief.

/s/ Clyde W. Summers
CLYDE W. SUMMERS

AFFIDAVIT OF H. W. BENSON

City of New York
State of New York

Herman W. Benson, being duly sworn voluntarily deposes and states as follows:

1. My name is Herman W. Benson; I am and have been for ten years the Executive Director of the Association for Union Democracy, a non-profit organization devoted to the cause of promoting the principles and practice of the internal union democracy in the American Labor Movement.

2. For the past twenty-two years I have spoken with hundreds of trade unionists, I have read extensively and closely followed the elections and other practices within American unions. Between 1959 and 1972 I edited and published a newsletter, *Union Democracy in Action*, which reported upon developments in the area of union democracy. Since 1972, I have edited *Union Democracy Review*, which is published by the Association for Union Democracy. Among the unions I have studied closely are the United Steelworkers of America and the Mine Workers (UMW).

3. As the Executive Director of AUD, the Association for Union Democracy, I approved and participated in the decision to sponsor litigation on behalf of insurgents in the USWA's 1974 as well as 1977 election for the purpose of attempting to insure fair and honest elections.

4. I have closely followed the various elections within the USWA. I have done this by personal interviews and contact, telephone conversations and correspondence with participants, reading extensively, researching many

unpublished hearings and decisions, transcripts of meetings and studying the USWA's various constitutions. In 1960, at the request of the American Civil Liberties Union, I prepared and submitted a report regarding elections and democracy within the United Steelworkers of America. I have read the Affidavit of USWA International Secretary Williams regarding the history of elections in the USWA and Williams' assertion that the USWA has a long democratic tradition. Based upon my knowledge of the USWA's history, I believe that there has been a long history of insurgency within the USWA which, for the most part, has been beaten back by those in power in the Union frequently through undemocratic practices.

5. The million-member United Steelworkers of America is among the largest and most powerful of unions. Unlike the Teamsters, no one was ever murdered for challenging the Steelworkers officialdom; and unlike the miners' union under Lewis, oppositionists in the Steelworkers survive to fight another day. Nevertheless, the unions' leadership faces a chronic, nagging, unresolved problem: it cannot rest comfortably with union democracy because workers in the basic steel plants in the United States repeatedly express a deep distrust of the union officialdom; and so far, no union administration has succeeded in eradicating the roots of that hostility. Whatever the cause, so it remains.

6. As in most major unions, the membership and jurisdiction of the Steelworkers has expanded far beyond its basic industrial core, turning it into a kind of conglomerate which takes in workers in fabricating plants, big and small; seamen on ore-carrying boats; metal miners, aluminum workers, and others.

7. Meanwhile in the big basic steel plants, the heart of the union, something has gone wrong. In 1959, the

Labor-Management Reporting and Disclosure Act required a local-by-local breakdown of votes in union elections and made it possible to get some idea of who votes for whom. Since then, not one Steelworkers leadership won a majority in an election contest of the votes in basic steel. In the United Steelworkers of America, a majority of steelworkers—small "s"—throw their support in elections to those who oppose the administration.

8. For more than twenty years, there has been a history of insurgency in the union. From a glance back at that history, it would appear that insurgency in the Steelworkers stems from the striving of steelworkers to control the leadership of their own union.

9. The meaning of insurgency as an expression of the quest for steelworkers' leadership first became manifest in 1955 when the issues were symbolized and personified by a contest between Howard Hague and Joseph Molony in a special election for international vice-president, an election made necessary by the death of the previous incumbent. To fill the post temporarily, the international executive board, by a 22 to 9 split vote, endorsed President David McDonald's choice, his own administrative assistant, a man named Howard Hague. McDonald himself had never been a steelworker. Neither had Hague; before joining the union staff, he had managed a jewelry store. When he became the official candidate in the special election, there was sympathy among some officers and staff members for Joseph Molony who broke with the official family to run against Hague.

10. Molony had been a steelworker; he rose from the ranks to become District Director in Buffalo and a member of the international executive board. He campaigned hard, but when the election was over, the official count showed that Molony had lost to Hague by 184,542 to 400,017; but there were grounds for misgivings.

11. When Molony's supporters came into Chicago District 31 to campaign, their rally was invaded by thugs

who beat four of his supporters badly enough to need hospitalization. His election bulletin, *Voice of Victory*, reported, "One of the attackers who was arrested and indicted turns out to be a local Steelworkers official." Nationally, Molony was credited with more than 30% of the total. But, according to Charles Allard, then an experienced reporter on steel for the Pittsburgh Post-Gazette, Chicago's District 31 came in with an incredible 100 to 1 vote for Hague. (The District 31 director, Joe Germano, was a power in the Chicago Daley machine. Old traditions die hard. After he retired as director, the election of his successor was riddled with fraud.) Defeated for V.P., Molony remained as director of his own district, returned to the fold, and later joined I.W. Abel's challenge to McDonald.)

12. That first fissue in the official family front and Molony's strong performance as an insurgent were early warnings of discontent among steelworkers which soon erupted massively in the union's next regular elections. In 1957, ninety locals nominated Donald Rarick to run against David McDonald for president. Rarick, a totally unknown rank and file steelworker, could not count on the support of a single district director and, as far as is known, not a single member of the paid international staff. Coming from nowhere, he was credited with 223,000 votes to McDonald's 404,000; about 40% for Rarick, a startling result.

13. His actual showing was probably more impressive than the official count, for there were the days before LMRDA required certain protections for a fair election. Without a paid staff, with almost no formal organization, Rarick could hardly watch the count in a union which then had more than 3,000 locals. It was impossible to look for certain obvious clues to possible fraud, for the union published only overall international-wide results. It was impossible to get even a district-by-district tally. Rarick's request for a local-by-local tally

was denied. (Such tallies are now required by federal law.) Reporter Allard noted later that Chicago District 31 came in with 24-1 against Rarick. John Herling, in "The Right to Challenge" explains how such marvelous results were achieved.

> "In more than one district, the staff representatives had found their work cut out for them. As one said later, 'We worked overtime, got tired of marking ballots late into the night to make sure that McDonald came out of our district with a respectable majority.' "

14. It was in the spirit of the times. Three years later, Rarick was assaulted in the lobby of the Steelworkers convention hall in Atlantic City. From the podium that afternoon, President McDonald denounced Rarick, the victim, for creating the disturbance.

15. After a few years of erratic activity, Rarick vanished from the scene, but the union leadership had been shaken. Responding to continuing restiveness below, a palace revolt split the officialdom and half the leadership embarked upon what seemed like a kind of reform from above. I.W. Abel, Steelworkers Secretary-Treasurer and second in command, announced that he would run for president in 1965 against McDonald around the slogan of returning the union to the membership, promising a new era of democratization.

16. The tone of the campaign was nicely illustrated by a McDonald speech at an official union conference in Chicago, "I am a candidate for presidency of the United Steelworkers union, and I intend to be reelected . . . I am going to be tough, and I am going to be mean, and I am going to ride roughshod over my opposition."

Abel was backed by a majority of the district directors and a majority on the Executive Board, so that this time Abel's men would have the last word. When McDonald realized that he had problems, he proposed that the

American Arbitration Association supervise the election, but he lost at the Executive Board by 741-641 weighted ballot, which vote probably decided the election outcome; for, like Rarick in 1957, McDonald now depended upon others for an accurate count. The official results were close: Abel presumably defeated McDonald in a cliff-hanger. For Abel 308,000 or 50.8% For McDonald 298,000 or 49.2%. Each side was supported by half the staff; each accused the other of fraud.

17. Years later, in 1976, McDonald looked back philosophically from retirement and told a New York Times reporter, "I know how to run elections. I stole four elections for Joe Germano as director of District 31." Exactly who performed what service for whom in District 31 is not certain; nevertheless, in 1965 McDonald failed because he couldn't steal the election, nor could he guarantee an honest count under impartial outside supervision. Abel had control of the international executive board.

18. Nothing under Abel succeeded in eliminating oppositional moods. When he first ran for reelection in 1969, Abel was opposed by an unknown staff attorney, Emil Narick, who owned a union card only because he was a member of a union of professional staff employees affiliated to the Steelworkers. The results were a jolt. The official count showed that Narick had won a majority in the basic steel plants and 41% of the national total; and these figures omitted the votes of big pro-Narick locals with a combined membership of 30,000 which had been thrown out by the tellers.

19. In 1973 (Steelworkers elect officers every four years), Abel and the other top officials were reelected without opposition on the ballot, but there was no real peace for the administration. Continuing opposition was expressed in elections for district directors in which there were challenges in eleven of the twenty-five districts. The lowest opposition vote polled in any contested district was

27%. In three others, it ranged from 34% to 45%. In three districts where there were more than two candidates, the administration winner was elected with less than a majority, as little as 30% in one district and 44% in another.

20. In District 20, Pennsylvania, the administration candidate was declared elected in a field of three after receiving 10,558 votes out of a total of 23,775, less than a majority. Walter Bachowski, one of the defeated insurgents who was credited with 9,651, went to the Labor Department with charges of fraud, but the Department threw out his complaint. Bachowski went all the way up to the U.S. Supreme Court and back to federal district court where the judge found that the Labor Department could not justify its dismissal of his complaint. Before the case could be completed, four years had elapsed; when Bachowski ran again in 1977, he won.

21. In a four-way race, the administration candidate for director of District 28, Ohio, squeaked in with 4,641 votes out of a 15,292 total. Frank Valenta, next in line only 200 votes behind the declared winner, complained that he had been denied timely information on voting sites and therefore couldn't post observers. When the Labor Department threw out his appeal, he went to federal court where the case hung in limbo until the Supreme Court settled Backowski. The district judge decided against Valenta, but the issue was ultimately resolved in 1977 when Valenta ran again, this time apparently with official family blessing, and won.

22. In District 31, in 1973, Ed Sadlowski ran for director, against the official family, to succeed the retiring Joe Germano. This is the same district where, in 1955, Charles Allard reported the 100 to 1 count against challenger Joe Molony. Unlike Molony, however, Sadlowski in 1973 could count on strong local support and could round up plenty of observers to watch the count. The

official family candidate Sam Evett was declared elected with 23,394 votes to Sadlowski's 21,606, but the Labor Department upheld Sadlowski's charges of fraud and filed suit in federal court to void the election. After resisting in court, the Steelworkers officialdom agreed to a reelection under D of L supervision. In the rerun, with his rights fully protected, Sadlowski swamped the official candidate by almost 2 to 1 by 39,637 to 20,158.

23. Heading up an opposition slate for top officers in 1977, Sadlowski ran for president against Lloyd McBride, the official family candidate who, of course, was backed by Abel, the retiring incumbent. Sadlowski could count on a strong caucus organization in the Chicago area but without support of the USWA staff he had difficulty making inroads in other districts. The official figures awarded the election to McBride: 228,861 to 249,281. When Sadlowski charged that the election had violated federal law, his appeal was rejected inside the union and then by the Labor Department.

24. After the 1977 USWA election, AUD was sued by the USWA's officers on behalf of the USWA to recover damages and to prevent our involvement in any future USWA elections. That lawsuit, entitled *McBride* v. *Rockefeller Family Fund*, was dismissed and dismissal was ultimately affirmed by the Second Circuit Court of Appeals. In that suit, USWA counsel offered to settle the case if AUD would agree that it would not expend any funds "in any way" in any future USWA elections without first notifying the USWA.

25. Following the 1977 election, the USWA adopted the rule barring candidates from receiving campaign contributions or assistance from nonmembers of the USWA. The rule will seriously undermine, if not totally eliminate effective insurgent campaigns in USWA national and district elections.

26. I am very familiar with the coal miners union, its history and the elections which were held in 1969 and 1972. I wrote extensively regarding these elections in *Union Democracy in Action* and in *Union Democracy Review*. If a rule barring receipt of campaign contributions and other electoral assistance from nonmembers had been in effect in the Mine Workers election supervised by the Department of Labor in 1972, I firmly believe that W.A. "Tony" Boyle would still be President of the UMW.

/s/ H. W. Benson
H. W. BENSON

AFFIDAVIT OF ROBERT HAUPTMAN

City of Washington
District of Columbia

Robert Hauptman, being duly sworn, voluntarily deposes and states as follows:

1. During late 1976 and early 1977 I worked in the union election campaign of Edward Sadlowski, Jr. for the Presidency of the United Steelworkers of America.

2. During that campaign, Lloyd McBride instituted a lawsuit against Mr. Sadolwski entitled *McBride* v. *Sadlowski*, (Cook Cty. Circuit Court No. 76-CH-7669).

3. As a result of that suit, both candidates disclosed their contribution lists to their election opponents.

4. I reviewed the list of campaign contributions provided by the McBride campaign and compared that list with the list of Officers and Staff of the United Steelworkers of America which was appended to the then most recent Annual LM-2 Report filed by the USWA with the United States Department of Labor.

5. Based upon my analysis, I concluded that approximately 90% of the contributions the McBride campaign admitted receiving came from the Officers and Staff of the USWA.

6. Approximately one-third of the USWA's Officers and Staff contributed to McBride's campaign. By far, the largest amounts received by McBride came from USWA Officers and Staff. Thus, most of the USWA's District Directors contributed at least $1,000 to the McBride campaign. The staff members who made "contributions" ordinarily paid $500 each. (Attachment A). In some

USWA District, every single staff member contributed an identical amount. Sometimes the payment to the McBride campaign were made in "installments". (Attachment B and C).

I have read the foregoing affidavit and believe it to be true, accurate and correct to the best of my knowledge and belief.

/s/ Robert Hauptman
ROBERT HAUPTMAN

HAUPTMAN—EXHIBIT A

USW-POST CANDIDATE, McBRIDE, ISSUES REPORT ON CAMPAIGN FUNDS

1-12-77

By a WALL STREET JOURNAL *Staff Reporter*

PITTSBURGH—Lloyd McBride, administration-backed candidate in the bitter United Steelworkers election, disclosed detailed records of his campaign contributions.

Some of the details disclosed by Mr. McBride seemed likely to add to the thicket of controversy surrounding the USW Election on Feb. 8.

Union sources said the records showed that Mr. McBride has received a total of $182,304, about $30,000 more than the total contributions disclosed Sunday by his rebel opponent, Edward Sadlowski.

Attorneys for the two candidates exchanged financial records yesterday in Chicago under discovery proceedings in a suit brought last month by Mr. McBride. The suit, filed in Cook County circuit court, alleged that Mr. Sadlowski has accepted "employer monies" to finance his campaign, in violation of the union's internal election rules.

According to union sources, the McBride records showed that although the St. Louis director has received the bulk of his funds from staff employees of the union, he has also received contributions from supporters outside the USW. The sources noted that of Mr. McBride's total 577 contributions, 447 came from union staff employes. An additional 130 contributions came from outside supporters, most of them members of the labor movement.

Other Contributions

Mr. McBride's non-Steelworkers contributors included Lane Kirkland, secretary-treasurer of the AFL-CIO, who

gave $300 last month. In addition, Mr. McBride received $500 last November from Jacob Clayman, secretary-treasurer of the AFL-CIO's industrial union department.

The administration-backed candidate also received contributions totaling $2,500 from 24 top officers of the Amalgamated Clothing and Textile Workers Union. The union's president, Murray Finley, said several months ago that he had appealed to his executive board for contributions to counter Mr. Sadlowski's fund raising among outsiders.

Sol Chalkin, president of the International Ladies' Garment Workers Union, also contributed $175 to Mr. McBride's effort.

At least one contribution to the McBride campaign appeared to have come from ouside backers similar to those tagged as "employers" in Mr. McBride's suit against Mr. Sadlowski.

Last March, Mr. McBride's records show he received a $1,000 contribution from the Granite City, Ill., law firm Calvo & Guzzardo. Reached yesterday, Lary Calvo, a partner in the firm, said the check was drawn on the firm's "business account." He added that his firm does all of the USW workman's compensation litigation for the Granite City-area subdistrict of Mr. McBride's St. Louis-based district of the union.

Mr. McBride also received a $50 contribution in October from Endicott Peabody, former governor of Massachusetts, according to union sources. Mr. Peabody is currently a partner in the law firm Peabody, Rivlin, Lambert & Meyers.

Broad Support From Staff

Despite these outside donations, the bulk of Mr. McBride's funds has come from USW officials and staff members. About a third of the union's total 1,550 field and headquarters staff contributed. The usual contribu-

tion from the field staff was $500. In addition, Mr. McBride received contributions of at least $1,000 from most of the union's directors and department heads. The largest individual contributions to the McBride campaign came from Mr. McBride and three members of his slate, who gave $4,000 each.

In a counterclaim filed in response to Mr. McBride's suit last month, Mr. Sadlowski has charged that the McBride campaign raised funds by "dunning the staff." Although there wasn't any evidence that Mr. McBride had coerced staff contributions, his records make clear that he has received overwhelming support from the current USW administration.

Mr. McBride's attorney, Bruce Miller, said Monday that the McBride campaign intended to make a full and complete disclosure of its contributions to date. He questioned whether the disclosure made by Mr. Sadlowski Sunday was equally comprehensive. He added that he will press for an audit of both candidates' books by certified public accountants.

HAUPTMAN—EXHIBIT B

19513 Springport Drive
Rowland Heights, California 91745

February 4, 1976

Dear Sir and Brother:

In confirming what you already know, I have announced my candidacy for the office of International Secretary-Treasurer and I am committed to a slate of fellow directors for the three top offices of the United Steelworkers of America.

I am jointed in this team effort by *Lloyd McBride*, Director of USWA District 34, who is a candidate for International President and *Lynn Williams*, Director of our Canadian District 6, who aspires to be the International Vice President. We have made formal our intention in a press conference held in Pittsburgh, Pennsylvania on October 22, 1975.

Our decision to seek these leadership positions is not motivated by any personal lust for status or power—all three of us feel we come from relatively secure districts. Instead, we formed this coalition very early in order to bring out into open discussion the important question of what the leadership of our great union should be. Should it stand up and be counted on those great achievements our union has made and introduce fresh, new ideas to meet the challenges of modern day reality? Or, as some inside our union and outside of its membership are saying . . . should be abandon the positive direction taken in the course of our history and abdicate to those whose interests are suspect of being negative, externally engineered and which in the course of time would divide and weaken the greatest instrumentality for progress metal workers have. . . . The United Steelworkers of America?

You are aware that our constitution requires that both President I.W. Abel and Secretary-Treasurer Walter J. Burke must retire from office at the end of their present terms. This fact robs the union of the team effort that marked the last ten years of progress. Joseph P. Molony retired under such circumstances four years ago.

Since union leadership isn't handed down on a platter but must be sought and earned, some must take hold of the baton being passed. It is our conviction that the leadership must first and foremost be made up of persons compatible with one another and who are representative of the various segments that comprise our Union.

Our ticket evolved out of such considerations—a team effort of experienced executive board members who reflect as nearly as possible every type of industry, geography and characteristic that makes up our union.

We in District 38 are, in fact, a microcasm of our entire union, having members in basic steel, aluminum, can, nonferrous metals, fabrication, office and technical, health care and minerals of every sort.

In Canada, our Union is the largest and is the most dominant. Our two nations are linked in many ways and the membership of each country needs the other to advance. My association with Director Williams convinces me that he is one of the able and articulate advocates of militant and progressive unionism. He will add to the slate an international dimension that is so sorely needed in the critical days ahead.

Lloyd McBride is a veteran. A very dedicated and most effective champion of our cause. His years of seasoned experience will assure this union a continuity of leadership that has been maintained over our 40-year history.

We feel we have the background, the experience and the will to put forth new and imaginative programs

to advance the interest in our union and its membership. But, being very practical and pragmatic persons, we know as you do that we must expose ourselves to our union's democratic process and to make ourselves and our programs known to the vast membership of our union. This will take time, energy, and total involvement of people like you. But, unfortunately, reality being what it is, it also will take a lot of money . . . far more than the personal assets of the trio on our team. We detest any solicitations from external sources.

There is but one way in which the necessary finances for a hard-hitting campaign can and should be derived. That is internally from fellow associates who share the same union goals and ideals. Most critical to this fund-raising effort has been, is now and will forever be—the staff members of our union who better than anybody understand this reality.

If you share in our committment to keep this union dynamic, progressive and united, you will want to be a part of our team effort in every way. Since we budget well in advance, your pledge of contribution to the campaign is desperately needed.

I am suggesting that the staff members in District 38 who share in our program for advancing the interests of our union agree to the following method of financial contribution to support the effort. Understand that this is to be a voluntary gesture and that it in no way is to be viewed as compulsory.

Projecting the cost of the campaign, I feel that each staff representative should be willing to contribute $25 monthly, commencing with March, 1976 until the election date of February 8, 1977. Such twelve months of contributions would be manageable for most of the staff. If some, who feel that circumstances would allow them to contribute more or to make the total contribution at one time now may so indicate on the pledge.

Pledges and/or contributions—monthly or otherwise—should be mailed to STEELWORKERS FOR MCBRIDE, WILLIAMS AND MCKEE, P.O. Box 67, Bridgeville, Pennsylvania 15017. Your pledge will be noted and acknowledged with a receipt.

Let me say that it would be very comforting to me to remain as Director of this great district which over the years gave so much in ideas, innovations and leadership to the rest of our Union. I chose a tougher course to take the initiative to work out a team arangement with those who I feel share the same interests and the same dedication as I do about our union.

We intend to conduct an energetic campaign, calling on our members to rekindle the spirit that made our union what it is today . . . . to charge out and meet the challenges facing our membership and its union. We intend to win because we are confident that our membership will respond to a positive campaign that is directed at building rather than destroying our union. We need you at our side.

My warmest faternal greetings. . . . .

Fraternally yours,

/s/ Frank S. McKee
FRANK S. MCKEE

HAUPTMAN—EXHIBIT C

Date	Name	Amount	Dist.	Pg.
8-15-75	Buddy Davis	50	34	1
8-1-75	" "	50	34	1
7-16-75	" "	50	34	1
9-16-75	" "	50	34	3
9-3-75	" "	50	34	3
10-2-75	" "	50	34	5
10-22-75	" "	50	34	5
11-1-75	" "	50	34	5
11-15-76	" "	50	43	31

AFFIDAVIT OF EDWARD SADLOWSKI, SR.

The undersigned being duly sworn voluntarily deposes and states as follows:

1. My name is Edward Sadlowski. I reside at 10457 Avenue J, Chicago, Illinois.

2. I am a retired steelworker. I began work in the steel industry in early 1937 when I got a job at Inland Steel. The very first day on the job I joined "SWOC" (the Steel Workers Organizing Committee), which later became the United Steelworkers of America. I participated in the "Little Steel" strike in May 1937, and after we won a contract, I worked for Inland Steel under a steelworker contract until 1969 when I retired. During the entire 32 years I worked in the steel industry, I was a dues paying member of the United Steelworkers of America.

3. In 1972 and 1973, my son Ed was a candidate for District Director of District 31 of the United Steelworkers of America. For several months during that election, I traveled to hundreds of plants distributing my son's campaign literature. I did not keep track of the exact amounts of money I spent on gas and other things while campaigning for my son, but I believe I spent around $250 out of my own pocket in making these campaign trips. During Ed's first campaign for District 31 Director, Ed's mother and I also gave $300 to Ed's campaign.

4. In 1974, when the District 31 election was being rerun, I again campaigned for my son, traveling from plant to plant and distributing literature. I spent about $200 out of my pocket to help Ed in that election.

5. After my son Ed declared his candidacy for the Steelworkers' presidency I again campaigned for him and members of his slate not only in District 31 but in

other USWA districts. I believe I spent between $200 and $300 out of my own pocket in campaigning for my son's election in 1976 and 1977. During that time, I raised some money for Ed from his three sisters. I think it was about $500.

6. I now get a pension from Inland Steel. The amount of that pension is set out in contract negotiations between the United Steelworkers of America and Inland Steel. Because the contracts are negotiated by the leadership of the USWA, I am directly affected by the elections which are held in the Union. Other retired steelworkers are in the same position I am and feel the same way I do.

7. Unless my help in future union elections would hurt my son's candidacy or the candidacy of someone else who I believe in, I would like to make contributions and to campaign in their elections to whatever extent I can.

8. As I understand it, the Steelworkers Constitution now prohibits retired steelworkers like me from making contributions or paying cash for our own expenses in campaigning for a candidate in district or international elections.

I have read the foregoing statement and believe it to be true and correct to the best of my knowledge and belief.

/s/ Edward A. Sadlowski
EDWARD SADLOWSKI

AFFIDAVIT OF LEONARD S. RUBENSTEIN

City of Washington
District of Columbia

The undersigned being duly sworn voluntarily deposes and states as follows:

1. My name is Leonard S. Rubenstein. I am a Plaintiff in this action. At the time the Complaint was filed I was a resident of the District of Columbia. At present, I am a citizen of the Commonwealth of Virginia and maintain a residence at 10 East Oak Street, Alexandria, Virginia 22301.

2. Before this action was filed, I had the opportunity to review carefully the allegations of the Complaint concerning me. I believe then and believe now that those allegations are true and correct to the best of my knowledge and belief.

3. I am a member of the Bars of the District of Columbia, the Commonwealth of Virginia and the Commonwealth of Massachusetts. I am presently Chairman of the Virginia affiliate of the American Civil Liberties Union.

4. For several years I have had an interest in union elections and in the cause of union democracy. Because of that interest and because I was also interested in hearing the views of then candidate for the USWA Presidency, Ed Sadlowski, I accepted an invitation to attend a fund-raising dinner held on behalf of Sadlowski in late 1976 at the All Souls Church located in Washington, DC.

5. My recollection is that I contributed $25.00 to Sadlowski's campaign in order to attend this dinner. I did attend along with approximately 100-200 others.

6. Because I continue to have an ongoing interest in union democracy, I would expect to make similar contri-

butions to Ed Sadlowski or some other candidate for office within the USWA in the future.

7. Because of my involvement and commitment to the goals and objectives of the American Civil Liberties Union, I am particularly sensitive to infringements of First Amendment Rights. The rule adopted by the Steelworkers purports to prohibit me from making campaign contributions and thereby expressing my support for a particular candidate in USWA elections. For that reason, I have joined as a Plaintiff with Ed Sadlowski in this case.

I have read the foregoing Affidavit and believe it to be true and correct to the best of my knowledge and belief.

/s/ Leonard S. Rubenstein
LEONARD S. RUBENSTEIN

AFFIDAVIT OF JUDITH OLINGY

The undersigned being duly sworn voluntarily deposes and states as follows:

1. My name is Judith Olingy. I live at 502 A Street, S.E., Washington, D.C. 20003.

2. I am a third year law student at Antioch School of Law in Washington, D.C. I am preesntly a legal intern at the law firm of Yablonski, Both and Edelman, 1150 Connecticut Avenue, N.W., Washington, D.C. 20036.

3. At Mr. Yablonski's request, I have studied and analyzed data surrounding resolutions submitted to the 19th Constitutional Convention of the United Steelworkers of America which led to the adoption of a constitutional amendment that prohibits candidates for USWA International and District offices from receiving contributions or assistance from non-members of the Union.

4. I have also examined the three resolutions regarding campaign financing which were attached to the Affidavit of International Secretary Lynn Williams, and are also attached hereto.

5. The first thing one notices when studying the resolutions appended to the Williams Affidavit is that two of the resolutions were obviously prepared and typed not by the local union submitting them, but for general mass use. Thus, the resolutions submitted by Local Union 3832 (District 37) has blanks inserted in it for the number of the Local Union and the date and month of approval. The names of the officers are not typed; there are simply signature lines and the titles of "President" and "Recording Secretary" listed on each form resolution. Finally, the resolution indicates a place where the local seal is to be affixed. Similar blanks are left on the resolution submitted by Local Union 7607 (District 6). Addition-

ally, the resolution purportedly prepared by this local union contains the following legend "opeiu-343". This designation means that the resolution was typed by a member of the Office and Professional Employees International Union, Local 343. I telephoned District 6 of the USWA headquartered in Toronto, Canada (whose former director was Lynn Williams—McBride's running mate and the current International Secretary), and was informed that "opeiu-343" does, indeed, represent clerical employees who work for District 6, USWA. This indicates to me that the resolution "form" submitted by USWA Local 7607 was typed in the District 6 office.

6. I carefully reviewed the list of locals which sent in resolutions which were considered by the Constitution Committee when it adopted and approved Article 5, Section 27 which appears at page 481 of the Official Proceedings, a copy of which is attached. The 225 resolutions submitted came from 209 locals according to the list appearing at page 481 of the Convention Proceedings. One resolution came from a local union in District 1, and another came from a local union in District 15. All remaining resolutions came from locals within only three other districts. Of the other 207 locals submitting resolutions, 83 came from Lynn Williams' home district, District 6 in Canada, 47 came from local unions in District 23, headquartered in Wheeling, West Virginia and 77 locals submitting resolutions were located in USWA District 37, located in Texas.

7. In further analyzing the locals which submitted resolutions, and comparing them against the 1977 election report of the union's tellers, the locals which submitted resolutions from these three districts were clearly pro-McBride Locals. Among the 83 locals listed on page 481 from Lynn Williams' home district, District 6, 74 are reported as having supported McBride, 2 supported

Sadlowski and 6 locals did not vote in 1977. And of these 6, two locals, Local 1264 and 8171 not only did not vote, but there is no record of them in the Union's audit reports for 1978. In checking the locals submitting resolutions from District 23, 41 of the 47 locals had supported McBride in the 1977 election and 6 had supported Sadlowski. Finally, in analyzing the local unions submitting resolutions from District 37 in Texas, I determined that 69 of the 77 locals had voted for McBride, 2 had voted for Sadlowski and 6 did not vote (one of these locals, Local 7567, neither voted nor apparently ever existed according to the audit reports).

8. There was not a single resolution submitted from locals in the largest USWA district, District 31; nor were there any from District 38, the second largest district; nor was such resolution on this subject received from District 26 in Youngstown or the Steel Valley in Pittsburgh.

/s/ Judith Olingy
JUDITH OLINGY

July 24, 1978

WHEREAS, In the recent Election for International Officers and District Director, outside sources became involved financially in the campaigns; and

WHEREAS, Corporations, by way of non-profit funds, were making back door contributions to candidates for office; and

WHEREAS, Those contributions could have been destructive influences to our Great Union:

THEREFORE, BE IT RESOLVED THAT: The Constitution of our Union be amended to provide that any candidate for office who accepts or seeks assistance from any of these sources, whether financial or otherwise, be disqualified from running for office.

Submitted by Local Union 1185, District 23, USWA

[Signatures Omitted in Printing]

ELECTION OF INTERNATIONAL UNION OFFICERS & EXECUTIVE BOARD MEMBERS

WHEREAS: It is apparent that in our last election of International Officers and Executive Board Members individuals and groups outside of our Union attempted to influence the outcome of our election by contributing money, distributing material, furnishing valuable services, etc. in behalf of candidates for these offices, and

WHEREAS: The present provisions of our Constitution do not provide adequate rules requiring the reporting of such activities or prohibiting them, and

WHEREAS: It is imperative to the welfare of our Union and its membership that the election of International Officers and Executive Board Members should be a process that permits the participation of Union members only.

NOW THEREFORE BE IT RESOLVED: Local Union 3832 this 16 day of Aug., 1978 recommends that the 19th Constitutional Convention of the United Steelworkers of America make the necessary changes in our Constitution to:

(1) Prohibit the interference or participation of non-members in our election process.

(2) Requires reporting by all candidates for such offices of all monies and services in behalf of their campaign, and

(3) Requires the disqualification of any candidate for such offices who solicits or accepts contributions of money or services from non-members of our Union.

[SEAL]

[Signatures Omitted in Printing]

WHEREAS conventional attempts by employers and employer organizations over the years to destroy our Union have failed, and

WHEREAS we have now seen new approaches during the last election by employers and employer organizations to destroy our Union by attempting to seize control of our Union by supplying substantial financial backing to candidates for International Office,

BE IT THEREFORE RESOLVED that this Convention provide for changes in our Constitution which will prohibit funds being made available to candidates, from sources outside of the labour movement.

/s/ [Illegible]
President

/s/ [Illegible]
Recording Secretary

[SEAL]

Local Union [Illegible]

Date [Illegible]

opeiu-343

The committee non-concurs in this resolution and recommends no change.

Resolution submitted by the following local union: 3073—26.

Article V, Sections 19 to 23—Pages 36 to 40

There were no resolutions submitted dealing with these sections.

Except the election time frame changes described earlier, the committee recommends no other changes.

. . . The recommendation of the committee was adopted.

Article V, Section 24—Page 40

There was one resolution submitted dealing with this section which would require observers to attest to the accuracy of the election results immediately following the official count.

The committee expresses its agreement in principle with this concept. However, since adequate provision to accomplish this objective can be incorporated into the International Elections Manual by the International Executive Board, the committee recommends no change in this section.

Resolution submitted by the following local union:

3127—31.

. . . The recommendation of the committee was adopted.

Article V, Sections 25 and 26—Pages 40 and 41

There were no resolutions submitted dealing with these sections.

No change.

Article V, New Section 27—Page 41

There were 225 resolutions submitted dealing with outside interference in our international elections.

Ninety-three resolutions would prohibit interference in our election process by non-members, require candidates to disclose their sources of campaign funds and would disqualify candidates who accept contributions from non-members.

Seventy-seven resolutions would bar candidates in international elections from accepting funds from sources outside of the labor movement.

Fifty-five resolutions would disqualify any candidate who seeks or accepts assistance from any source outside of the union.

The committee concurs in the spirit of these 225 resolutions and a similar suggestion from the International Executive Board and recommends the adoption of a new Section 27, to read as follows:

> "Sec. 27. No candidate (including a prospective candidate) for any position set forth in Article IV, Section 1, and supporter of a candidate, may solicit or accept financial support, or any other direct or indirect support of any kind (except an individual's own volunteered personal time) from any non-member. For purposes of this Section, the term non-member means any person who is either not eligible for membership under Article III or not in good standing or any foundation, corporation or other entity whose funds are derived in whole or in part from any person not eligible for membership under Article III or not in good standing.
>
> "The International Executive Board shall adopt regulations, for incorportion into the International Union Elections Manual, as necessary to implement this provision and to assure conformity with the obligations prescribed in this Section. Such regulations shall include requirements for reporting by candidates and their supporters of information pertinent to administration of and compliance with this Sec-

tion, with such frequency, not to exceed weekly, as the International Executive Board deems appropriate.

"There is hereby created a Campaign Contribution Administrative Committee to administer and enforce this Section. The Committee shall consist of three persons, appointed by the International Executive Board, for a term to begin not later than May 1, 1979, and end on August 1, 1983, who shall be distinguished, impartial citizens who are not members of the International Union. If a Committee member dies or resigns, the International Executive Board shall appoint a replacement. A quorum shall consist of two members of the Committee. The International President shall fix the compensation and expense of the Committee members, and shall arrange for the provision of supplies, services, and all other assistance required by the Committee. The Committee shall have the following powers:

"(a) The Committee shall have the authority to contact any and all non-members who it feels may be providing, or attempting to provide, prohibited support to any candidate, and attempt by persuasion to convince such non-members to refrain from providing such support.

"(b) The Committee shall have the power (i) to direct any candidate, or any supporter, to cease and desist from any course of conduct which the Committee believes breaches this Section or the regulations of the International Executive Board adopted pursuant to this Section and (ii) to direct any candidate, supporter or non-member to take such collective action as the Committee deems appropriate to cure the effects of any violation and/or assure that any improper conduct will not have an effect upon the election.

"(c) The Committee shall receive and promptly review the information candidates and their supporters are required to file by the regulations of the International Executive Board and by such additional requirements as the Committee may establish. The Committee may require candidates and their supporters to report whatever additional information the Committee deems appropriate to perform its functions.

"(d) In the event that a candidate, or a supporter of a candidate with that candidate's knowledge or acquiescence, willfully and substantially breaches the obligations prescribed in this Section, or the regulations adopted by the International Executive Board pursuant to this Section, the Committee shall, upon notice and hearing under such expedited conditions as the Committee deems appropriate in the circumstances, have the power to declare such candidate disqualified, and to so notify the International Tellers.

"(e) If the Committee in its sole discretion determines that legal proceedings are necessary for the enforcement of this Section 27, it may institute whatever legal proceedings it deems appropriate, in the name of the International Union. The Committee shall be the only party authorized to institute legal proceedings to enforce the provisions of this Section 27.

"(f) The Committee may recommend to the International Executive Board that additions or amendments be made to the regulations adopted by the International Executive Board pursuant to this Section and shall have such other powers as the International Executive Board determines are necessary for the implementation of this Section or, if the International Executive Board deems it advisable, any other Section of Article V.

"Any member who believes that another member is violating these provisions may file a complaint with the Committee. The Committee shall process that complaint in such manner as it deems appropriate and may adopt rules with respect to the filing and processing of member complaints.

"With respect to the administration of this Section 27, decisions of the Committee shall be final and binding, and not subject to review by any tribunal within the Union."

Resolutions submitted by the following local unions:

90—37, 107—37, 157—37, 166—37, 325—37, 332—37, 333—37, 509—37, 1185—23, 1223—23, 1238—23, 1260—23, 1264—6, 1397—15, 1742—37, 1817—6(3), 1822—37, 1865—23, 2000—6, 2126—37, 2228—37, 2256—23, 2282—37, 2294—23, 2375—6(3), 2383—23, 2729—6, 2741—37, 2997—23, 3096—23, 3174—23, 3189—1, 3241—23, 3252—6(2), 3292—6, 3349—23, 3363—23, 3393—23, 3430—37, 3466—6, 3621—23, 3721—37, 3739—23, 3767—6, 3789—6, 3832—37(4), 3952—6, 4134—37, 4151—6, 4163—6, 4210—6; 4218—23, 4252—6, 4370—37, 4387—23, 4430—37, 4474—6, 4487—6, 4488—6, 4501—6, 4540—37, 4584—6, 4605—6, 4629—37, 4632-6, 4644—6, 4654—37, 4656—6, 4657—6, 4697—6, 4820—6, 4880—37, 4895—37, 4927—6, 4946—37, 4992—37, 5009—6, 5019—6, 5022—37, 5055—6(2), 5068—6, 5073—37, 5141—6, 5312—37, 5354—37, 5371—6, 5411—37, 5417—6, 5475—6, 5481—6(4), 5494—23, 5502—23, 5559—37, 5599—6, 5613—37, 5648—23, 5664—23, 5668—23, 5669—37, 5681—37, 5703—23, 5712—23, 5724—23, 5750—6, 5754—37, 5762—6, 5801—37, 5851—37, 5855—6, 5925—23, 5953—6, 6012—6, 6028—6, 6178—37, 6193—37, 6197—23, 6282—37, 6312—37, 6320—6, 6339—6, 6340—6, 6379—23, 6409—6(2), 6431—6, 6444—6, 6464—37, 6497—6, 6509—37, 6519—6, 6580—37, 6595—6, 6606—37, 6753—6, 6794—37, 6854—6, 6888—23, 6945—23, 6971—6, 7178—37, 7242—37, 7339—6, 7412—37, 7466—

6, 7507—37, 7567—37, 7568—37, 7607—6, 7612—37, 7624—37, 7744—6, 7756—37, 7790—37, 7879—6, 7893—37, 7940—6, 7943—37, 7949—6, 7964—6, 7977—37, 7982—37, 8033—6, 8056—23, 8126—6, 8135—37, 8171—6, 8229—6, 8234—6, 8237—37, 8256—37, 8327—6, 8370—37, 8441—6, 8473—6, 8493—37, 8509—37, 8533—6, 8543—23, 8580—6, 8604—37, 8618—37, 8631—37, 8669—37, 8675—37, 8696—6, 12219—6, 12237—37, 12315—23, 12610—23, 12625—23, 12877—23, 13071—23, 13586—37, 13678—23, 13691—6, 13693—23, 13852—37, 14183—6, 14193—6(3), 14200—23, 14364—37, 14802—23, 14856—6, 14976—23, 14999—6, 15042—23, 15058—23, 15085—6(2), 15297—6, 15519—23.

. . . The recommendation of the committee was adopted.

Article VI, Section 1—Pages 41 and 42

The committee must note that a date change is required on line 12 to determine the date of the next regular international convention. Accordingly, the year 1978 will be deleted and will be replaced by the year 1980.

There were four resolutions submitted dealing with this section which would hold the next regular international convention in Detroit, or in Canada, or in an area with a large concentration of union members.

Because of the complexities involved in the selection of a convention site, the committee recommends that these resolutions be referred to the International Executive Board for their consideration.

Other than the required date change, the committee recommends no other change in this section.

Resolutions submitted by the following local unions:

1104—28, 2659—29, 2869—38, 8533—6.

. . . The recommendation of the committee was adopted.

AFFIDAVIT OF JUDITH R. SCHNEIDER

City of Washington
District of Columbia

The undersigned being duly sworn voluntarily deposes and states as follows:

1. My name is Judith R. Schneider. I am presently employed as an attorney on the staff of the United States Federal Trade Commission in New York City, New York.

2. From 1973 through 1978 I was employed as an attorney or consultant by the Association for Union Democracy.

3. In February of 1974, I was assigned by the Association for Union Democracy ("AUD") to assist in the effort then being made to obtain a rerun election for the position of District Director of District 31 of the United Steelworkers of America. An election had been held in District 31 in February, 1973 between Sam Evett, a candidate endorsed and supported by the USWA's "official family", and Ed Sadlowski. Up until that time, the District 31 Director had been Joe Germano, but Mr. Germano had announced his retirement.

4. According to the election results announced by the USWA, Evett defeated Sadlowski by a vote of 23,394 to 21,606. Sadlowski challenged the election on the grounds that there had been massive irregularities, including ballot box stuffing. Despite direct evidence supporting Sadlowski's claim, the USWA Executive Board refused to upset the election and installed Evett as the District Director.

5. After Sadlowski had filed a complaint with the United States Department of Labor, the Labor Department sued to upset Evett's election and to require a rerun. Mr. Sadlowski intervened in the lawsuit.

6. On behalf of AUD, I participated in gathering evidence to establish election violations and I investigated various events surrounding the 1973 election.

7. As a result of my inquiries and based upon discovery undertaken in the election lawsuit, I learned that Joseph B. Jeneske—an affiant for the USWA in this case —was a sub-District Director in District 31 at the time of the 1973 election. Jeneske was also Sam Evett's campaign manager. In his capacity as campaign manager, Jeneske pressured the staff members in District 31 to support Mr. Evett and all except one (Ray O'Malley) succumbed to Jeneske's pressure. At Jeneske's insistence, the entire staff of USWA District 31, except O'Malley and one other person, Anthony Graczyk, contributed funds to Evett's election and otherwise supported Evett's candidacy.

8. I have read the Affidavit of Mr. Jeneske submitted by the USWA. It is ironic that Mr. Jeneske should refer in his Affidavit in this case to the "political freedoms which they [USWA staff] enjoy in connection with elections of USWA officers", when he himself was the agent of the "official family" entrusted with the task of ensuring that staff members not exercise such political freedoms in the 1973 District 31 election.

9. After the 1973 District 31 election, Jeneske was transferred from Chicago, Illinois to Pittsburgh, Pennsylvania and promoted to the position of Personnel Director at USWA Headquarters.

10. When the District 31 election was rerun pursuant to entry of a consent order, Sadlowski defeated Evett by a margin of 2 to 1.

I have read the foregoing Affidavit and believe it to be true and correct to the best of my knowledge and belief.

/s/ Judith R. Schneider
JUDITH R. SCHNEIDER

[DECLARATIONS AND EXHIBITS IN FURTHER SUPPORT OF DEFENDANT USWA'S MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT]

DECLARATION OF FRANK LESEGANICH

1. I am District Director of District 26, United Steelworkers of America, AFL-CIO-CLC ("USWA"). The District 26 office is in Youngstown, Ohio, with Sub-District offices in Youngstown, Niles, Warren, Ashtabula, and Salem, all in Ohio. There are now, and have been throughout the period described in this declaration approximately 50,000 USWA members within the geographic area of District 26 and eligible to vote in elections of District Director of District 26.

2. I was first elected District Director of District 26 in 1969, and was re-elected in 1973 and 1977. Prior to first being elected Director in 1969, I was a "rank and file" local union member and officer. I was employed by Youngstown Sheet & Tube Corp. at its Brier Hill Works, and was active in the affairs of USWA Local 1462, which consists of the employees at that plant. In the years prior to 1967, I was a grievance committeeman in Local 1462; from 1967 until my election as District Director in 1969, I was the elected President of Local 1462. I never served as a staff employee of USWA.

3. In 1969, I ran against the incumbent District Director of District 26, James Griffin. Griffin had been the Director for many years, and he was one of the most influential officials within USWA. He was, for example, the Chairman of USWA's negotiating committee with U.S. Steel Corp., the largest company in the union's ju-

risdiction. In addition, Griffin was very close to the top officers of USWA, and had their endorsement and support in his campaign against me. An indication of Griffin's closeness to USWA's then-President, I. W. Abel, is that Griffin was one of the two co-chairmen of Abel's reelection campaign in 1969, the same year that I was running against him.

4. In my 1969 race against Griffin, I did not have the support or assistance (financial or otherwise) of even a single member of the USWA staff. My "campaign team" consisted of approximately 70 rank and file unionists, who were members and/or officers of various USWA local unions within District 26. The campaign consisted of a few rallies, one raffle, and principally of distributing campaign leaflets to the members at the plants where they worked. This distribution was done by rank and file USWA members who worked at the various plants.

5. My campaign symbol was a broom, accompanied by the slogan "Clean Sweep". The theme of my leaflets was the repeated question "Are You Satisfied?", followed by a description of an issue, with the recommendation that if members were *not* satisfied with the way USWA had dealt with that issue in the past, they should vote for me.

6. I received no money whatever from anyone except USWA members to finance my campaign. All of the money I spent was my own money, or money contributed by rank and file USWA members. I received no money from any person on the USWA staff.

7. I was not represented by a lawyer at any time during the 1969 election campaign until after the voting had been completed. Post-election challenges were filed with respect to the voting at several locals, which I knew would be decided ultimately by the International Executive Board. As I knew I had received a majority of the votes, I had an interest in assuring that those challenges

would not be upheld. Accordingly, I asked a lawyer to advise me what position to take on those challenges. The lawyer also accompanied me to Pittsburgh to attend the final tally of votes by the Honest Ballot Association. I never paid a fee to the lawyer. Apart from the lawyer, I received no assistance of any kind from persons outside USWA.

8. In the 1969 election, I was credited by the International Executive Board with 13,845 votes to Griffin's 11,683. Despite Griffin's closeness to the top officers of USWA, and his longstanding relationship with the other members of the International Executive Board, the Board declared me the winner and Griffin the loser, rejecting Griffin's challenges. I was installed as District Director of District 26 on June 1, 1969, the regularly-scheduled installation date.

9. I ran for re-election in 1973, and was opposed by Frank Trainor, a member of the USWA staff employed in District 26 and two other candidates one of whom was a staff representative. Although the USWA staff employed in District 26 works under my immediate direction, most of the staff employees actively supported Trainor rather than me. Thus, although I was the incumbent, I was dependent for campaign assistance and contributions largely upon rank and file USWA members. Once again, I ran without receiving any money whatever (nor any other service) from anyone except USWA members. I was re-elected receiving 8,874 votes to Trainor's 8,476. The two other candidates received a combined total of 3,760 votes.

10. I ran again for re-election in 1977. This time three candidates ran against me: Charles Hinchliffe, Jack J. Williams and Milton Cross. Williams was and is an organizer working out of the International's Pittsburgh Organizing Department, and Hinchliffe was and is a Staff Representative. Once again, most of the staff em-

ployees were actively supporting one or another of my opponents, and, although I was the incumbent, I was dependent for campaign assistance and contributions largely upon rank and file members. And, once again, I ran without receiving any money whatever (nor any other service) from anyone except USWA members. Iwas re-elected, receiving 7,730 votes to Hinchliffe's 4,921, Cross' 4,525, and Williams' 4,513.

11. I understand that Edward Sadlowski, Jr., has filed an affidavit in this action in which he alleges that Marvin Weinstock, who was one of his running mates in the 1977 election, has been the "victim" of political retribution", because although Weinstock remains on the staff, "he has been loaded up and assigned more locals to service than any other staff man in his District." This allegation is absolutely false, and I am in the best position to know because Marvin Weinstock works in District 26, under my immediate direction, and it is I who assigns him (and every other staff employee in the District) the locals which each services.

12. Marvin Weinstock has been a staff employee in District 26 for as long as I have been District Director. He currently services six locals, compared, for example, to Mike Mangan and Arthur Davis, each of whom services twelve locals, and Jen Williams, who services eight locals. There was a brief four-month period (from July 13, 1979 to November 13, 1979) when, because of the death of a staff employee, ther emaining staff employees were given additional locals to service until a replacement could be secured. Even during that brief period, when Weinstock had three additional locals to service, there were other staff employees in the District (for example, Mangan and Davis) who serviced more locals than Weinstock.

13. In 1975, long before he ran for office on Sadlowski's slate, Weinstock was servicing eleven locals (com-

pared to fourteen for Davis, eleven for two other staff employees, and ten for two other staff employees). Throughout the period since he became Sadlowski's running mate, the number of locals which Weinstock has been assigned to service has been smaller than it was in 1975.

14. I should state that the decisions on assigning locals to Weinstock all have been made by me; none have been dictated by President McBride or any other International Officer. In making those assignments, politics has played no part in my judgments. Arthur Davis, who is a close personal friend of mine, has consistently been assigned more locals to service than Marvin Weinstock.

15. The *number* of locals is not a wholly reliable indicator of a staff employee's workload. Locals are of different sizes, have different problems, and some require more staff time than others. That is why different staff employees have different number of locals to service. I work hard to equalize the workload among the staff employees, making assignments on the basis of time required, not simply numbers of locals.

16. I declare, under penalty of perjury, that the foregoing is true and correct.

/s/ Frank Leseganich
FRANK LESEGANICH

Executed this 25 day of April, 1980.

DECLARATION OF MITCHEL F. MAZUCA

1. I am District Director of District 4 of USWA, which embraces the State of New York. I was first elected District Director in 1969, and was reelected in 1973 and 1977.

2. The incumbent District Director of District 4 until 1969, Matthew Armstrong, retired and did not seek reelection in 1969. I was one of three candidates who ran in 1969 to succeed him. One of my opponents, Anthony Barbieri, was endorsed by the incumbent top officers of USWA, who were themselves seeking reelection in the 1969 election, and Barbieri ran on a slate which included himself and the incumbent top officers. Five staff employees in District 4 supported my candidacy; approximately forty staff employees in District 4 supported Barbieri's candidacy.

3. My campaign committe was entitled "Rank and File Committee to Elect Mazuca." As the name suggests, mine was definitely a "rank and file' campaign, in competition with a candidate who was the announced choice of USWA's President, I.W. Abel, and Mr. Abel's fellow officers.

4. My campaign was financed in the following way: I borrowed $5,000 from a bank at regular commercial interest rates, I borrowed $5,000 from a friend (which I repaid in timely fashion), and $17,000 was raised by the Rank and File Committee To Elect Mazuca through the sale of raffle tickets to USWA members. The Committee raffled of a $100 prize each month, with raffle tickets sold inside the plants by USWA members who worked in those plants and supported by candidacy.

5. If Art. V, § 27 had been in effect at the time of my 1969 election campaign, the only change it would have made in my financing is that I could not have secured an

interest-free loan from a friend. Insead, I would have had to borrow that amount commercially and paid regular interest on it—a cost of a few hundred dollars. This, obviously, would have had no effect on my campaign.

6. The final vote in the 1969 election was Mazuca, 8786 votes; Barbieri, 6825 votes; and Michael Sam (the third candidate), 5199 votes. As explained above, my campaign would have been no different if Art. V, § 27 had been in effect, and I would have won that election, defeating the candidate who was running on the top officers' slate, even if Art. V, § 27 had been in effect at that time.

7. I consulted a lawyer once during my 1969 campaign, for approximately one-half hour. He did not charge me a fee for this consultation. It is my understanding that Art. V, § 27 does not preclude such "volunteered personal time" by a non-member, and thus I could have had this consultation without fee even if Art. V, § 27 had been in effect in 1969.

/s/ Mitchel F. Mazuca
MITCHEL F. MAZUCA

DECLARATION OF JOSEPH ODORCICH

1. I am the International Vice-President (Administration) of the United Steelworkers of America, one of the five International Officers of the USWA. I was first elected to the position in 1977.

2. Prior to 1977, I was Director for the Union's District 15, having been elected to that position in 1970 in a rerun election and reelected in 1973. District 15 is a District which encompasses Southwestern Pennsylvania with a membership of approximately 58,000 to 60,000. There are approximately 28 staff representatives assigned to service local unions in District 15. Prior to being elected Director in District 15, I had served as a staff representative for the USWA from 1949 on. Prior to that, I had worked for the Pittsburgh Steel Foundry Company and served as President of USWA Local Union 1306 which serviced that plant.

3. In 1957, Paul Hilbert, who was then the President of a local union in the District, ran for Director against the incumbent Director John Sullivan. (At that time the District did not include the Johnstown, Canonsburg and Donora areas which were then a part of another District, District 13. Those areas were merged into District 15 in 1968.) Mr. Hilbert's campaign was truly a "rank and file" campaign. He had only one staff representative supporting him—me. Hilbert's campaign was primarily a plant-gate type of campaign. He went to plant gates, shook hands and passed out some literature. To the best of my knowledge, and I was very active in his campaign, Hilbert put some of his own money (obtained in part by mortgaging his house) into the campaign and received contributions from friends, nearly all of whom were members of the Union. He also generated funds through

raffles. The tickets were sold by and large in the plants. Hilbert defeated incumbent John Sullivan and served as Director of District 15 from 1957 until 1969. The amount of money which Hilbert received from non-members of USWA was so small that the campaign would not have been changed even if that money had not been received and thus the outcome of the 1957 election would have been the same even if Article V, Section 27 had been in effect.

4. I ran for District Director against Hilbert in the election which was held in February of 1969. There were two other persons on the ballot: Coleman Conroy (an officer of Local Union 1397) and George Kutska (a staff representative like myself). All of the staff supported Hilbert. Hilbert also had support from the International Officers. My campaign was conducted without one penny from persons outside the USWA. I campaigned by going to plant gates, shaking hands with members and by creating a group of local union people who worked closely with me. I have found in my experience that when you are opposing the incumbent as I was, it is not difficult to get a lot of local union people to help you. After the election was conducted, the International Tellers declared me the winner. The International Executive Board reversed and declared Hilbert the winner. I then filed a complaint with the Department of Labor which, in turn, sued the Steelworkers. The suit was settled without any determination being made but with agreement upon a rerun election involving the same candidates. I won the rerun election. Once again, I did not receive one penny of outsider money for my campaign. In the rerun, some of the staff who had previously supported Hilbert supported me. However, at least half of the staff campaigned vigorously against me. My own campaign strategy for

the 1970 election was essentially the same as for the 1969 election, namely, extensive plant-gate contact and use of committees of local union people in support of my candidacy.

5. In connection with the protest to the 1969 election, I utilized the services of a Pittsburgh attorney. The attorney was introduced to me by a friend who was also a USWA member. The attorney rendered legal services to me without charge.

6. I did not play an active role when the Convention considered Article V, Section 27, except that as a member of the International Executive Board I voted to recommend its adoption to the Convention. I am opposed to outsiders gaining control of our Union by putting money into our elections and then having candidates who owe them favors. If those candidates get elected, they will run the Union for the benefit of the outsiders who bankrolled them and not for the benefit of the Union's membership. In favoring Section 27, I had no thought or expectation that it would deter others from running against me or against anybody else who is in office. I do not think it will.

7. The only other way to have protected against outsider takeover of our Union would have been to move away from referendum elections and go instead to Convention elections (as most large Unions have). As candidates do not require very much money to run in Convention elections, this course would have eliminated the danger of candidates becoming dependent on outsiders for financial support. There were, in fact, many people within the Union urging that we go to Convention elections. I personally believed, and still believe, that referendum elections are a better way to elect national officers, because every member gets a chance to participate directly in picking those officers. The proposal to prohibit all outsider involvement which Section 27 accomplished

played a significant role in blunting the efforts of those who were advocating that the Union switch to Convention elections.

8. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Joseph Odorcich
JOSEPH ODORCICH

Executed on this 25th day of April, 1980.

DECLARATION OF JAMES M. COYNE

1. I am the Director of United Steelworkers of America District 19, a District which encompasses 14 counties in Northcentral Pennsylvania. While the membership in the District fluctuates depending upon economic conditions during the relevant period covered by this affidavit, membership in the District ranged from approximately 27,000 to 32,000. There are 20 staff representatives assigned to the District to service 189 local unions involving 229 companies.

2. I was elected in District 19 in 1977. Prior to that time I served as a staff representative of the United Steelworkers of America for 26 years. Prior to my appointment as a Staff Representative, I worked at an American Bridge plant in Lawrencevill, Pennsylvania and was President of Local 1579 which is the local assigned to service that plant.

3. In 1973 an election for Director in District 19 was held with the incumbent not eligible to run for reelection. I did not run for Director in District 19 in 1973. I supported Walter Bleil, another staff representative. Mr. Bleil ran against three other individuals; John Schneider, staff representative, Theodore J. Pypos, President of Local 1537 and Regis Sager, President of Local Union 1579. During the election campaign which led to the 1973 election for District Director, it was commonly believed in the District that the International Officers supported the candidacy of John Schneider. Notwithstanding that fact, 15 of the 20 Staff Representatives in District 19 supported the election of Walter Bleil. In connection with the campaign, we raised about $2,000—all from members of the Union and spent approximately $1,500 of that amoun. The excess was used to throw a victory party for our supporters. Bleil was elected. The vote was:

Bleil	6,710
Pynos	4,419
Schneider	2,734
Sager	811

4. In the election for Director in 1977, I ran against the then incumbent Director Walter Bleil. Neither Mr. Bleil nor myself received any formal endorsement from the International Officers or from Lloyd McBride. Fourteen of the 20 staff representatives supported my candidacy against the incumbent. The remaining six opposed it. The campaign for Director in District 19 was separate and independent from the campaign for International President or for any of the other International Offices. I made no contribution to the McBride candidacy or to the Sadlowski candidacy. I received no funds from McBride or Sadlowski.

5. While I received contributions from various of the staff representatives who supported me in 1977, the most any staff representative gave was $100. I do not believe that my campaign raised over $3,000. All of the money which was raised for my campaign in 1977 came from members of the Union with the exception of one $20 contribution from my in-laws. I essentially spent all of the money which I raised. Based upon my knowledge of my opponent Walter Bleil's campaign, I estimate that he probably spent a little less than the amount of money which I spent. I won the election with 9,004 votes to Bleil's 7,162.

6. Neither Walter Bleil when he was elected Director in 1973 nor myself when I was elected Director in 1977 engaged in any recriminations or retribution against any of the staff representatives who opposed us.

7. I declare under penalty of perjury that the foregoing is true and correct.

/s/ James M. Coyne
JAMES M. COYNE

DECLARATION OF FRANK J. VALENTA

1. I am the District Director of United Steelworkers of America ("USWA") District 28. District 28 encompasses the Northeastern part of Ohio with a concentration of membership in Cleveland, Ohio. It has approximately 30,000 members. Fifteen staff representatives were at the relevant time referred to in this Declaration assigned to District 28.

2. Prior to being elected Director of District 28 in 1977, I was a staff representative of the USWA from 1965 on. Prior to that time, I served as the President of Local Union 2287 and worked at the U.S. Steel Central Furnace Operation in Cleveland, Ohio for 14 years.

3. In 1969, Joseph Kender, then the President of a local union in the District, ran against the incumbent, Paul Schremp. I served as Schremp's campaign manager for that election. All of the staff suported Schremp and none of the staff supported Kender. The International Officers also supported Schremp. So far as I could tell, Kender made no efforts to raise money from outside sources. In fact, it is my understanding that he borrowed heavily to finance his own campaign. Notwithstanding the foregoing facts, Kender beat Schremp in that election. Kender's 1969 campaign was essentially waged against the 1968 Basic Steel Contract Settlement. He labeled it a "sell out" and his unsophisticated and unpolished literature was primarily targeted to that agreement. Kender also was successful in attracting a lot of local union people—especially in Basic Steel local unions—to assist him in his campaign.

4. In the 1973 election, I ran against incumbent Kender. Two other staff representatives, Carl Roberts and Charles Quinn, also campaigned for Director. I do not believe that there was any significant outside money in this campaign. There certainly was none in mine. The Interna-

tional Officers supported Kender and even put out a letter to this effect. One staff representative supported me. The balance of the 15 staff representatives (other than Roberts and Quinn) supported Kender. The election tally reflected an extremely close vote:

Kender	—	4,641
Valenta	—	4,441
Roberts	—	4,167
Quinn	—	2,043

I am convinced that had Roberts and Quinn not been in the race to draw off some of the anti-Kender votes, I would have defeated Kender by a substantial margin.

5. My campaign organization for the 1973 election was called the "Valenta Boosters." I started planning for the 1973 election in 1969. One distinguishing feature of my campaign organization was that I held annual dinner dances which were a type of gourmet dinner. Much of the money I raised for my 1973 election campaign came from these dinner dances. Those who attended these dinner dances were local union members who were desirous of supporting me and my campaign organization. I would estimate that 95 percent of those who attended were members of the Steelworkers and five (5) percent were frinds of members of the Steelworkers. I spend more than five (5) percent of the receipts from these fund raisers in making contributions to various causes, such as the Farmworkers and the Farah Slacks Boycott.

6. Following the 1973 election, I kept my campaign organization together. I continued to hold dinner dances and to broaden the rank and file base in my organization. In addition, I raised money through the use of raffles, with the tickets sold to Steelworkers in the plants where worked. I ran against Kender in the election in 1977. This time Roberts and Quinn were not on the ballot. Ten of the 15 staff representatives supported me. Four supported Kender. However, the staff support coming as it

did fairly late in the campaign was not an important part of my campaign. Indeed, my campaign meetings were not held with staff representatives but with my rank and file committee. I received no funds from McBride or Sadlowski in connection with my campaign for Director and no formal endorsement from either of them. I ran against Kender and Kender's record as a Director. I had a lot of McBride supporters and a lot of Sadlowski supporters. The results of the election reflect, I am convinced the effectiveness of my campaign organization and the absence of other persons on the ballot to funnel away anti-Kender votes. I won the election in a landslide. I received 11,120 votes to Kender's 3,500.

7. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Frank J. Valenta
FRANK J. VALENTA

Executed on this 28th day of April, 1980.

DECLARATION OF DAVID ROOP

David Roop declares under penalty of perjury as follows:

1. On December 18, 1979 I executed an affidavit in this case concerning the candidacy of Harry Lester for the position of District Director of District 29 of the United Steelworkers of America (hereinafter "USWA"), and particularly the fundraising activities connected with Lester's campaign. In this declaration, I will update the matters discussed in my December 18 affidavit.

2. In that affidavit I stated that "(o)ur compaign for Harry Lester began as a rank and file campaign, and we expect it will remain that way." I stated that through fund-raising activities conducted strictly in accordance with the requirements of the USWA Constitution, including Article V, Section 27, the Committee to Elect Harry Lester (of which I am Chairman) was enjoying great success in raising campaign funds, with virtually all the funds coming from rank and file USWA members within District 29. I noted that he had achieved these results without the endorsement of the incumbent District Director, Charles Younglove, or of any International officer, and with the support to date of only a handful of the more than 30 staff representatives in the District.

3. The fundraising success described in my December 18 affidavit has continued. In that affidavit I projected that by Valentine's Day of this year we would have raised close to $30,000 in contributions to Lester's campaign. We have in fact done slightly better than that projection. And we continue to expect that we will reach the goal stated in my December 18 affidavit, of $80,000 in contributions by the end of the campaign (May, 1981).

4. It continues to be the case that virtually all of the contributions to Lester's campaign—well over 95%—have come from rank and file members in District 29, and that

all fundraising has been strictly in accordance with the USWA Constitution, including Article V, Section 27.

5. Of the more than 30 staff representatives within District 29, eight have now announced their support for Harry Lester. We have no knowledge as to whether other staff representatives will ultimately endorse Lester.

6. Director Younglove has not endorsed Lester's candidacy, and we have no knowledge as to whether he will ultimately do so. Director Younglove is in no way assisting Lester's candidacy. Likewise, no International officer has endorsed Lester's candidacy, or has assisted it in any way; and we have no knowledge as to whether any officer will ultimately do so. In conducting our campaign for Harry Lester we have not counted on any support from Director Younglove or from any International officer, nor have we claimed to the membership that Lester is likely to receive such support. And nothing has happened which would lead any potential contributor to believe that Lester's candidacy is or will be endorsed by Director Younglove or any International officer. As I stated in my December 19 affidavit, our campaign for Harry Lester began as a rank and file campaign, and we expect that it will remain that way.

I have read the foregoing Declaration consisting of three typewritten pages, and I declare under penalty of perjury that the statements contained in it are true and correct.

/s/ David Roop
DAVID ROOP

DECLARATION OF BERNARD KLEIMAN

1. I am General Counsel of United Steelworkers of America, AFL-CIO-CLC ("USWA"), and have held that position since 1965. Prior to becoming USWA's General Counsel, I was counsel for USWA in Chicago and surrounding regions.

2. To date, I have been listed on the papers as one of the attorneys representing USWA in this action. In view of various statements contained in affidavits submitted by plaintiffs, it becomes necessary for me to submit this declaration, because I am the person most knowledgeable about certain matters and thus in the best position to respond. In view of my becoming a witness herein, I have instructed USWA's other attorneys that I will no longer appear as counsel in this action.

3. As General Counsel, I maintain an office in USWA's Headquarters in Pittsburgh as well as an office in Chicago, and I divide my time between the two offices. My responsibilities as General Counsel of USWA include overseeing all litigation to which USWA is a party, participating actively in major collective bargaining negotiations involving USWA, attending all meetings of the International Executive Board, advising the officers and staff of USWA to assure USWA's compliance with the law and USWA's own internal rules and policies, and addressing on a day -to-day basis questions which arise affecting USWA's internal operations and/or USWA's relationship with the outside world. By virtue of my manifold duties, which involve the entire spectrum of USWA's affairs, I have been intimately familiar with the manner in which USWA's elections are conducted; and I am personally knowledgeable about the course of each election of USWA International Officers and District Directors from 1965 to the present. All of the

statements contained in this declaration are based upon my personal knowledge, unless otherwise noted.

4. I have read the affidavit of Edward Sadlowski, Jr., which speculates that "the USWA offered the [CCAC] positions to a number of persons who refused to serve" (Par. 17(6)). That speculation is wrong. Every person to whom USWA offered the CCAC positions accepted. I describe the process by which CCAC members were selected below.

Folowing the Convention's adoption of Article V, § 27, the first implementing step was to select the persons who would serve on the CCAC. Art. V, § 27 provided that the CCAC members were to be "distinguished, impartial citizens who are not members of the International Union." It further provided that they were to be "appointed by the International Executive Board." Because the Board consists of 30 persons located through the United States and Canada, and meets only a few times a year, it was logistically necessary that potential CCAC members be tentatively selected, and their willingness to serve confirmed, before the Board met, so that if the Board found those tentative selections appropriate it would be in a position to make final and effective appointments. A subcommittee of the Board was established to make tentative selections for recommendation to the full Board. I was asked to assist the subcommittee in this process.

Because Art. V, § 27 specified that the CCAC's term was to begin on May 1, 1979, and the International Executive Board was scheduled to meet on May 3, 1979, the subcommittee's object was to have a list of willing candidates whose appointment the Board could consider at its May 3 meeting.

USWA has an enormous Canadian membership (it is the largest union in Canada) and the subcommittee as-

sumed that the Board would want one member of the CCAC to be a Canadian. The subcommittee's tentative selection of a Canadian member was easy. David Lewis, a distinguished lawyer and one of the most important public figures in Canada, had recently retired from the Canadian Parliament and relinquished his position as Federal Leader of the New Democratic Party. He was now a research professor at Carleton University in Ottawa, and thus likely to have time to participate on the CCAC. Lewis was contacted, the CCAC and its purpose were described to him, and he was asked whether he would be willing to serve. He said that he would.

For the Chairman and remaining member of the CCAC, the first persons whom the subcommittee decided to contact were, respectively, Msgr. George C. Higgins and Prof. (now U.S. Circuit Judge) Harry T. Edwards. Msgr. Higgins (whose biography is attached as Exhibit A) is Secretary for Special Concerns of the United States Catholic Conference, National Conference of Catholic Bishops. He has devoted his life to public service projects, and is extremely knowledgeable about the labor movement. Prof. Edwards was one of the nation's leading academicians in the field of labor law. Both Msgr. Higgins and Prof. Edwards advised that they would be pleased to serve on the CCAC.

The subcommittee thus recommended to the International Executive Board, at its May 3, 1979 meeting, the appointment of Msgr. Higgins as Chairman, and Prof. Edwards and Mr. Lewis as members, of the CCAC. The Board voted to make those appointments. Each of the appointees was so notified. Attached as Exhibit B is Prof. Edwards' letter of May 21, 1979, formally accepting the appointment.

By letter of May 29, 1979, Msgr. Higgins advised USWA President McBride of his "reluctant decision to resign from the Committee"—a decision which he explained was compelled, following consultation with his

colleagues at the Catholic Conference, by his heavy workload at the Conference and a decline in his health. I subsequently spoke with Msgr. Higgins, and he elaborated upon the health considerations which were the major factor in his decision.

On July 24, 1979, I received a letter from Prof. Edwards (attached as Exhibit C), stating that "the increasing press of my work with Amtrak" made it necessary that he withdraw as a member of the CCAC. (Prof. Edwards had recently been appointed Chairman of the Board of Amtrak, a position which he held concurrently with the performance of his duties as Professor of Law at the University of Michigan Law School).

Upon the withdrawals of Msgr. Higgins and Prof. Edwards, the Board subcommittee was reactivated to tentatively select a new Chairman and one new member of the CCAC. The first persons whom the subcommittee decided to contact were former Secretary of Labor W. Willard Wirtz for Chairman, and Pittsburgh attorney Eric W. Springer for Member. I contacted them, and each expressed willingness to serve. The subcommittee recommended their appointment to the Board, and the Board voted to appoint them at its meeting on September 25, 1979. (The speculation in the affidavit of Edward Sadlowski, Jr., at Par. 17(5), that the Board did not make the appointments until January, 1980, is incorrect.)

The CCAC has, since its formation, held several organizational meetings. It has appointed, as its Staff Counsel, Edward D. Friedman, of the Washington, D.C. law firm of Highsaw, Mahoney & Friedman. Mr. Friedman served as Deputy Solicitor of Labor under Secretary of Labor Wirtz, and it is my understanding that Mr. Friedman's appointment as Staff Counsel of the CCAC was proposed by Chairman Wirtz and approved by the other members of the CCAC. Mr. Friedman does not now have, nor has he had during the past 15 years

that I have been General Counsel, any connection with USWA; and it is my belief that he did not have any connection with USWA even prior to my becoming General Counsel in 1965.

5. One of the allegations of the complaint in this lawsuit—specifically Count IV—is that Art. V, § 27 will interfere with the access of candidates (or their supporters) to legal representation in lawsuits relating to USWA elections. In Memorandum of Defendant United Steelworkers of America, AFL-CIO-CLC, in Support of Motion to Dismiss Or, in the Alternative, for Summary Judgment, at p. 39 (filed January 10, 1980) USWA's lawyers suggested that the "natural construction" of Art. V, § 27 is that it would not be applicable to lawsuits to enforce legal rights, but acknowledged that "it is the members of the CCAC, not we, who are charged with construing the rule." USWA's Memorandum argued, p. 40, that "[i]f there were any possibility that the rule could be construed in a manner which would offend § 101(a)(4)—and we have shown that there is not—plaintiffs would be required to seek a ruling from the CCAC before coming to this Court. Only if the CCAC in fact rendered a construction arguably offending § 101(a)(4) would plaintiffs then have a basis for instituting a legal challenge in court."

Plaintiffs have not in the intervening months brought the matter to the CCAC, although it is self-evident that the ostensible concerns voiced in Count IV of their complaint would be wholly eliminated were the CCAC to construe Art. V, § 27 as inapplicable to lawsuits. Nevertheless, on April 3, 1980, USWA's lawyers *themselves* requested an interpretation from the CCAC, so that this Court could have the benefit of a definitive interpretation of Art. V, § 27 before ruling on Count IV. A copy of that request is attached as Exhibit D. The CCAC furnished a copy of this request to plaintiffs' attorneys, secured their position thereon, and considered how to

handle the request in its executive session on April 23, 1980. The upshoot of that session is a directive that the parties submit memoranda to the Committee by May 7, 1980, containing detailed analyses of specified questions, following which the CCAC will "set the matter down for full consideration in its next executive meeting". A copy of the CCAC's directive addressed to USWA counsel is attached as Exhibit E. It is my understanding that an identical directive was addressed to plaintiffs' counsel. USWA will submit a memorandum to the CCAC, as directed, by May 7, 1980.

6. Plaintiffs' Statement of Material Facts As To Which There Is No Genuine Dispute makes repeated reference, in numerous paragraphs, to a supposed "official family" (in some instances with the words capitalized, i.e. "Official Family"), as though there were some formal entity or political party by that name. That same usage appears throughout the affidavits of Edward Sadlowski, Jr., James Balanoff, and Joseph Samargia, along with a depiction of the "Official Family" as a monolithic, "us against them" band of insiders who join ranks to oppose any insurgent's effort to secure election to high office in USWA. Neither the caption nor the depiction bears any correspondence to reality.

The words "official family" (without capitals) were used in a deposition once, many years ago, by I. W. Abel, then USWA's President, to describe generically USWA's elected International Officers and District Directors. That generic usage is common in the English language, and it carries with it no implication as to the political dispositions of the various persons who happen to hold office. Nevertheless, one of plaintiffs' attorneys, Joseph L. Rauh, Jr., has persisted ever since in employing the term as though it had some formal significance, and his clients have now taken up the habit.

In fact, the International Officers and District Directors of USWA—who collectively constitute its 30-

member International Executive Board, i.e. its "official family"—are a heterogenous collection of individuals with very diverse political views and allegiances, whose only common characteristic is that they have succeeded in being elected by the membership. The "official family", as Abel used the term, currently includes James Balanoff and Linus Wampler, whose political opposition to the policies of the incumbent top officers is amply demonstrated in plaintiffs' papers; three other persons who secured office only after first challenging USWA's election practices through the Department of Labor: Joseph Odorcich (now Vice-President-Administration of USWA, one of USWA's five top offices), Walter Bachowski (who was represented by Joseph Rauh, Jr., in *Bachowski v. Dunlop*, 421 U.S. 560 (1975)), and Frank Valenta; three others who first achieved office by defeating the incumbent: James Coyne, Frank Leseganich, and Charles Younglove (Odorcich and Valenta are also in this category); three others who first achieved office by defeating candidates endorsed by USWA's officers to succeed retiring incumbents (Mitchel F. Mazuca, Jean Gerin-Lajoie, and Edward Plato); and several others who opposed I. W. Abel's election to the Presidency of USWA.

Nor is this heterogeneity a recent development. For example, two former members of the "official family", who served on the Board until the 1977 election, were plaintiff Edward Sadlowski, Jr., who defeated a candidate endorsed by USWA's top officers, and Joseph Kender, who, after challenging USWA's election practices through the Department of Labor, defeated an incumbent. That the "official family" has never been a monolithic entity is also evidenced by the 1955 and 1965 contests described in Pars. 9 and 15-16 of the affidavit of Herman Benson submitted by plaintiffs. (Most of Benson's affidavit is fanciful and inaccurate, including most of the statements in the cited paragraphs, but the single fact that the elected officers were widely split in the Hague-Molony and Abel-McDonald contests is correct).

7. I have read the affidavit of Clyde Summers, which purports to provide "expert" testimony about the difficulties facing insurgents who run against incumbents in union elections. That affidavit does not purport to describe circumstances in USWA as such, but contains generalizations about all unions which Prof. Summers apparently assumes must be applicable to USWA. (I say "assumes" advisedly, because Prof. Summers does not claim to have any direct knowledge about USWA, nor even any hearsay knowledge (apart from the single fact that Abel and McBride received personal contributions from officers of other unions, *id.* at 14); and in my 15 years as General Counsel of USWA I have never known Prof. Summers to have been personally involved with USWA in any way). I do not profess to know enough about other unions to be able to say whether Prof. Summers' observations may be correct as to some other unions. I *can* say from extensive direct, personal knowledge and experience that *none* of his generalizations is true as to USWA.

Prof. Summers characterizes unions as lacking any continuing opposition to their incumbent officers, so that challenges to incumbency are infrequent and episodic. One need not look further than the affidavit of Herman Benson, also submitted by plaintiffs, to realize that this characterization is not true of USWA. (While Benson has no more direct knowledge about USWA than Summers, and has an interest and bias which I will describe later, he purports to have acquired hearsay knowledge about USWA, and in a few instances his recitation is accurate or partly so). Thus, Benson is correct in his statement that "[f]or more than twenty years, there has been a history of insurgency in the union" (Par. 8); and also in his statement that there has been a substantial voting bloc among USWA's basic steel industry membership—the biggest segment of USWA's membership—which traditionally has supported candidates running against incumbents (Par. 5). (But Benson is incorrect

in his statement that a majority of USWA members in basic steel have always voted against the candidate sympathetic to the incumbent administration (Par. 7)—in 1977, McBride carried the basic steel locals by a small margin). Benson is correct that, from an electoral standpoint, there is "no real peace for the administration" in USWA (Par. 19), but Benson draws the erroneous conclusion that this signifies that there is something wrong with USWA's system; on the contrary, what it shows is that there is something *right* with the system: USWA has a tradition of democracy and of willing and vigorous opposition to incumbents.

Prof. Summers depicts as virtually impossible the prospect of a relative unknown mounting a serious campaign for high union office, but once again Benson's affidavit shows that the generalization is not true of USWA. Thus, Benson is correct in noting that in 1956 "a totally unknown rank and file steelworker," without the support of "a single member of the paid international staff," secured 40% of the vote in his quest for the USWA presidency (Par. 12), and that in 1969 a little known staff attorney (Benson exaggerates in calling him "unknown") secured 41% (Par. 18). The more important point, however, is that candidates for office at that level in USWA ordinarily are *not* unknowns; they are more often candidates who, like plaintiff Sadlowski in 1977, are widely known within the union when their candidacy begins, and become even more widely known as the campaign continues because USWA's election contests are the subject of almost daily news coverage in the newspapers, and on radio and television, in the major industrial cities.

Prof. Summers describes four "crucial" "advantages" which he believes incumbents enjoy in union elections. (Summers Affidavit, Par. 10). However, because of special safeguards which exist within USWA, of which Prof. Summers plainly is unaware, incumbents in USWA enjoy none of those advantages.

(a) First, Prof. Summers believes that incumbents have "control of the paid, staff" for political purposes, because the paid staff "take orders from the officers, and can be dismissed by the officers." According to Prof. Summers, such staff employees "have no practical protection from dismissal—there is no Hatch Act for union employees." (*Id.*, at p. 8). But quite the opposite is true in USWA: there is *total* protection for staff employees—indeed broader protection than the Hatch Act affords federal employees. USWA's staff employees have a right (which the President of USWA reaffirms before each election by personal letter to each staff employee) to support whomever they choose, and they have unqualified contractual protection against any discipline or reprisal for exercising that right.

(b) Second, Prof. Summers believes that incumbents "have control of the union newspaper", which can be used to their political advantage. (*Id.*, at p. 9). But in USWA the newspaper is and always has been apolitical; to avoid any disputes between candidates as to its fairness, USWA's newspaper does not carry any stories describing the candidacies of those seeking USWA office. And the "hard news" coverage—i.e. coverage of regular union affairs—is in no way slanted. For example, in the period preceding the 1977 election Sadlowski and McBride (who occupied identical positions within USWA) received virtually identical news coverage (with Sadlowski receiving very slightly more than McBride).

(c) Third, Prof. Summers believes that "incumbents have ready access to the members" by virtue of their "official business." (p. 10) But those who seek top office in USWA *against* incumbents ordinarily are "incumbents" themselves—either USWA officers or USWA staff employees or USWA local union officers—and by virtue of those positions have ready and broad access to the members. The five members of Sadlowski's slate in 1977, for example, consisted of a USWA officer (Sadlowski),

three USWA staff employees (Montgomery, Kmec and Weinstock), and a local union officer (Rodriguez). And plaintiff Samargia is, as his affidavit recites, president of the largest local union in his District. I have been apprised of the contents of the declaration of Eldon Kirsch, which describe the meetings and conferences held in the past few months which would be attended by a local union officer in District 33. That listing is representative of similar lists which could be compiled for each other USWA district. To that list, however, should be added the USWA Convention—a convocation of thousands of delegates from virtually all of USWA's local unions—which is held a few months before USWA's elections, and which provides a prospective candidate with extensive access to the principal opinion-makers throughout USWA. Those who elect to seek high office in USWA invariably serve as delegates to USWA's Convention, and thus have the benefit of this easy access.

(d) Fourth, Prof. Summers believes that incumbents "have access to legal services, at the union's expense." But in USWA this is wholly untrue. During each USWA election campaign, certain of USWA's lawyers, who have announced their neutrality as between the candidates, serve as USWA's legal representatives in all election-related matters; these lawyers are not available to provide legal services to *any* candidate, incumbent or otherwise. The remainder of the USWA lawyers are treated like any other staff employee: they may not engage in any political activity during their work time (i.e. during the time for which USWA pays for their services). Moreover, lawyers in the latter category are not permitted to represent USWA in any election-related matter. By this careful set of rules, USWA assures that not one penny of USWA money is used to furnish legal services to candidates, be they incumbents or insurgents.

The "bottom line" of Prof. Summers' "expert" analysis—that those running against incumbents cannot hope

to succeed without substantial financial support from outsiders (i.e. non-members of the union)—is refuted (at least insofar as the diagnosis is intended to be applicable to USWA) by the many who have done precisely that. (See, e.g., affidavits of Leseganich, Mazuca, Odorcich, Coyne, and Valenta, filed in this action). And Prof. Summers' predicate for that "bottom line"—that only incumbents can secure "contributions from the union members" (Summers' affidavit, Par. 12)—is refuted as to USWA not only by those same affidavits, but by the simple observation that if (as Benson correctly says) there is widespread opposition to incumbents within USWA, then there is a broad base of potential contributors available to those who would run against incumbents.

8. In an effort to demonstrate that contributions cannot easily be obtained from rank and file members, plaintiff Sadlowski in his affidavit suggests that he made a diligent effort to raise such money within his own District in his 1977 campaign for USWA's presidency (Sadlowski, Jr., affidavit, Par. 6). I know from my personal knowledge (I live in the Chicago area, which is within District 31) that Sadlowski engaged in at best sporadic fund-raising efforts among the membership of his District. Indeed, the coordinator of Sadlowski's campaign, in an article published after the election, attributed Sadlowski's defeat in part to the failure of the organization conducting his campaign, "Steelworkers Fight Back" (SFB), to effectively organize the rank and file membership:

> By early July 1976, SFB had collected the names of only 800 potential supporters nationwide, and many were of no known importance. It wasn't until November that even a list of District 31 contacts was assembled. When the campaign staff began to organize safaris into new territory, they made no effort to target dissident locals, and they concen-

> trated on gathering signatures on petitions demanding rank-and-file contract ratification. But rank-and-file ratification was not an issue for the 60 percent of the membership who already voted on their contracts, and the signatures were clumped by the hundreds within a few large locals. An analysis of the contact file in October showed some 7,500 names, but only 300 out of 5,300 locals were represented, and half of these were covered by one person of unknown reliability. Many names had no addresses at all.

I am confident that discovery would establish that Sadlowski's efforts to obtain contributions from USWA members in District 31 (he does not claim even to have tried in the other Districts) were minimal, in large part because Sadlowski knew he could get all the money he needed from outsiders. Moreover, Sadlowski does not claim to have organized "rank and file" members to conduct fund-raising efforts inside the plants even in District 31, the technique used with success by other "insurgent" candidates. Others who have mobilized the "rank and file" on behalf of a popular candidate without "administration" backing have had little difficulty in securing financial support from USWA members (see, e.g., affidavit and declaration of David Roop, and declarations of Joseph Odorcich, Frank Leseganich and Mitchel Mazuca, submitted by USWA in this action).

9. Plaintiffs have submitted an affidavit of Herman Benson, who is Executive Director of an organization known as Association for Union Democracy ("AUD"). Benson's affidavit consists entirely of hearsay, and that hearsay is almost all incorrect (except for the few items previously noted in this affidavit). In the course of my duties as General Counsel, I was advised of the following information in connection with another lawsuit to which USWA was a party. Pursuant to Benson's direction, AUD was a component part of Sadlowski's 1977 election

campaign. AUD opened an unmarked store-front office next door to Sadlowski's headquarters, and spent over $100,000 of "outsider" money to enhance Sadlowski's campaign. (Those monies were contributed to AUD by non-profit foundations holding investments exceeding sixteen million dollars in corporations with which USWA has collective bargaining relationships. Among the services AUD provided Sadlowski were the assignment of one (and sometimes two) payroll employees of AUD to the store-front office whose functions, *inter alia*, were to hold press conferences on Sadlowski's behalf, monitor rival press conferences, draft Sadlowski's campaign literature, provide day-to-day administrative assistance and support to the Sadlowski slate campaign, and otherwise participate in the development and implementation of the Sadlowski slate's campaign strategy. One of the AUD-paid employees was variously described in press accounts as a "part of the informal Sadlowski entourage" and as a Sadlowski campaign "spokesman" and she was reported in the press as referring to Sadlowski as "her man."

Benson, thus, is not the "neutral" he depicts himself to be in his affidavit. Nevertheless, it is possible that he really believes the hearsay allegations contained in his affidavit. Certainly, Sadlowski and his supporters had every reason to regale a gullible Benson with stories of alleged USWA iniquity, to assure that this wellspring of "outsider" money would not run dry. (Incidentally, Clyde Summers is on the Board of Directors of the AUD. I have no knowledge, however, nor reason to believe, that he participated in any way in AUD's activities relating to USWA's 1977 election).

10. The affidavit of Sadlowski, Jr. (Par. 12) speculates that Pat Coyne, a staff employee who contributed to Sadlowski's campaign, was "fired" in reprisal for his support of Sadlowski. The circumstances relating to Coyne's discharge have been investigated by USWA's legal staff in connection with another lawsuit which is

pending. Coyne took leave during the weeks prior to the election, as he was entitled to do, in order to campaign for Sadlowski. However, when the election was over, Coyne returned to work for only a few days, and then absented himself on the ground that he was medically disabled. After Coyne had been absent for nearly eight months, collecting his full salary pursuant to USWA's Sick Leave Policy, USWA directed that he be examined by the Pittsburgh Diagnostic Clinic to determine whether he was capable of returning to work. The Clinic examined Coyne and advised USWA that Coyne was not disabled from performing a desk job. As Coyne's job *is* a desk job, he was directed to return to work. When he refused, his employment was terminated. Coyne's insubordinate refusal to come to work, not his political activities many months before, was the sole reason for his termination. Indeed, one of USWA's Vice President, and an assistant to USWA's President, each had met personally with Coyne and urged him to return to work, explaining that USWA had no desire to terminate his employment but wanted only that he return to work.

11. I have no personal knowledge of the role played by plaintiff James Miller in the 1977 election. But if, as I believe to be the case, his services were performed as part of the AUD operation described in Par. 9 above, then it would not be accurate to characterize those services as "an effort to assure a fair election". I believe that discovery would demonstrate that Mr. Miller's services were not "legal services" and that they were an effort to secure Sadlowski's election rather than "an effort to assure a fair election."

12. I have knowledge of the role played by Joseph L. Rauh, Jr., in connection with Mr. Sadlowski's campaign for District Director of District 31 in 1973-74. Mr. Rauh was not retained "to handle his [Sadlowski's] complaint with the Secretary of Labor under Title IV of the LMRDA" (as asserted in Plaintiffs' Statement of Mate-

rial Facts As To Which There Is No Genuine Dispute, Par. 17), but, rather, to attempt to get information from the Department of Labor which could be used for Sadlowski's campaign purposes. I attach as Exhibit F the Magistrate's Report and Recommendation in *Marshall v. USWA*, No. 73-957 (W.D. Pa., June 7, 1979) which so finds at pages 14-17.

13. I have knowledge of the role played by Joseph L. Rauh, Jr., and the Association for Union Democracy in connection with the 1974 re-run election in District 31. That role was not to "monitor compliance by Defendant USWA with the consent order" (as asserted in Plaintiffs' Statement of Material Facts As To Which There Is No Genuine Dispute, Par. 19), but, rather, to secure every possible tactical advantage for Sadlowski to enhance the likelihood that he, rather than his opponent, would be elected (e.g. seeking more voting lines at locals which Mr. Rauh characterized as "Sadlowski territory", but not seeking more voting lines at other comparably-situated locals).

14. I have knowledge of Mr. Rauh's quest for the payment of his fees by USWA, referred to in Plaintiffs' Statement of Material Facts As To Which There Is No Genuine Dispute, Par. 21. USWA has resisted paying those fees because Mr. Rauh is not legally entitled to them, for he conferred no benefit upon the members of USWA. A federal Magistrate has so ruled. See Exhibit F, attached.

15. I have knowledge of the lawsuits referred to in Par. 29 of Plaintiffs' Statement of Material Facts As To Which There Is No Genuine Dispute. The complaints in at least two of those lawsuits (*Rodriguez v. USWA*, and *Sadlowski v. Marshall*) were wholly without merit, and were so regarded by the judges who heard them. (In *Rodriguez*, plaintiffs withdrew their complaint following the first hearing before the court; in *Sadlowski v. Marsh-*

all, summary judgment was granted to defendants by Judge Gasch, and his decision was summarily affirmed).

16. Candidates for office in USWA may request mailings at their own expense to the entire membership, or to any segment thereof which can be readily segregated in the USWA mailing records.

17. I have no direct knowledge of the plans of plaintiffs Sadlowski, Jr. and Samargia with respect to the 1981 election. Each, however, is so well known among the electorate to which he would be appealing that it is simply inconceivable that his decision whether to be a candidate would turn upon the existence of Art. V, § 27. If either elects not to run, Art. V, § 27 may be cited as a rationale, but it will not in fact be the reason for the decision.

18. In the months preceding every USWA Convention, USWA's lawyers undertake to draft proposed resolutions, constitutional amendments, etc., in connection with matters which they anticipate may come before the Convention. Because I knew that a proposal to ban outsider contributions was being actively considered at various levels within the union, I had a draft provision prepared. This was done at my initiative; I was not "instructed" to do so by "McBride and his closest advisors" (as alleged in Balanoff's Affidavit, Par. 11). The most detailed consideration of various alternative formulations of such a provision occurred during the week prior to the Convention, as explained in Paragraphs 11 and 12 of the Affidavit previously submitted by Lynn Williams.

19. I declare, under penalty of perjury, that the foregoing statements are true and correct.

/s/ Bernard Kleiman
BERNARD KLEIMAN

Executed this 28 day of April, 1980.

KLEIMAN—EXHIBIT A

Rev. Msgr. George C. Higgins
Secretary for Research Special Concerns
United States Catholic Conference
National Conference of Catholic Bishops
1312 Massachusetts Avenue, Northwest,
Washington, D.C. 20005
Telephone: a/c 202-659-6795

Born:

Chicago, Illinois, January 21, 1916

Education:

St. Francis Xavier Parochial School, LaGrange, Illinois
Quigley Preparatory Seminary, Chicago, 1929-1934
St. Mary of the Lake Seminary, Mundelein, Illinois, 1934-1939

Graduate study in Economics and Political Science at Catholic University of America, 1940-1944

M.A. 1942—"The Under-Consumption Theory in the Writings of Monsignor John A. Ryan"

Ph.D. 1944—"Voluntarism in Organized Labor in the U.S., 1930-1940"

Institute for Continuing Theological Education, Rome, Italy, 1973

Ordained a priest of the Archdiocese of Chicago at St. Mary of the Lake Seminary, May 18, 1940

Elevated to Papal Chamberlain with title of Very Reverend Monsignor, October 1953

Named a Domestic Prelate in December 1959

Positions:

Taught in the Department of Economics, School of Social Science, Catholic University, the following subjects:' "Catholic Labor School Movement;" "Current Labor Problems."

Appointed to staff of Social Action Department, National Catholic Welfare Conference in May, 1944; appointed Assistant Director of Department in January, 1946; appointed Director in November, 1954. Appointed Secretary for Research of United States Catholic Conference in June 1972.

Organizational Activities:

Member of Preparatory Commission on Lay Apostolate for Vatican Council II and Consultant to the Council

Member, Religious Consultants Panel, United States Information Agency

Chairman, Public Review Board, United Auto Workers

Member, Board of Governors, Center for Research and Education in American Liberties, Columbia University

Member, Executive Committee, Leadership Conference on Civil Rights

Consultant, Bishops Committee for Catholic-Jewish Relations

Consultant, Bishops Committee on Farm Labor

American Priest Auditor, 1971 Synod of Bishops, Rome

Publications:

Occasional book reviews in Commonweal, America and The Sign

Weekly syndicated column, The Yardstick

KLEIMAN—EXHIBIT B

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL

Legal Research Building
Ann Arbor, Michigan 48109

May 21, 1979

Bernard Kleiman, Esq.
General Counsel
United Steelworkers of America
One East Wacker Drive
Suite 1910
Chicago, IL 60601

Dear Mr. Kleiman:

I will be happy to serve on the Campaign Contribution Administrative Committee as outlined in your letter of May 7, 1979. It is my understanding that the details of an arrangement for a retainer for Committee members will be worked out in the near future after the Committee has had an opportunity to confer.

Per your request, I am enclosing herewith a copy of a Biographical Sketch.

I will look forward to hearing from Monsignor Higgins regarding future plans for the Committee.

Best regards.

Sincerely,

/s/ Harry T. Edwards
HARRY T. EDWARDS
Professor of Law

Enc.

HTE/dj

KLEIMAN—EXHIBIT C

THE UNIVERSITY OF MICHIGAN
LAW SCHOOL

Legal Research Building
Ann Arbor, Michigan 48109

July 24, 1979

Bernard Kleiman, Esq.
General Counsel
United Steelworkers of America
One East Wacker Drive
Suite 1910
Chicago, Illinois 60601

Dear Bernie:

Due to the increasing press of my work with Amtrak, I am afraid that I will be unable to sit as a member of the new Campaign Contribution Administrative Committee. I am sorry to have to withdraw after originally indicating a willingness to serve, however, my time constraints have become more and more impossible.

Sincerely,

/s/ Harry T. Edwards/dj.
HARRY T. EDWARDS
Professor of Law

(Dictated by Professor Edwards and mailed in his absence.)

HTE/dj

KLEIMAN—EXHIBIT D

BREDHOFF, GOTTESMAN, COHEN & WEINBERG
Attorneys and Counselors
1000 Connecticut Avenue, N. W.
Washington, D.C. 20036

April 3, 1980

Campaign Contribution Administrative Committee
c/o Edward D. Friedman, Staff Counsel
Highsaw, Mahoney & Friedman, P.C.
Suite 210
1050 17th Street, N.W.
Washington, D.C. 20036

Gentlemen:

The undersigned attorneys for the Union (who are also members of the Union) request, on behalf of the Union, that the CCAC issue interpretations of Article V, Section 27 with respect to the following matters:

(1) Does Article V, Section 27 prohibit the solicitation or acceptance of monies (or other things of value) from nonmembers to finance lawsuits asserting candidates' (or other union members') legal rights in connection with elections?

(2) If the answer to (1) is generally "no", is a different answer warranted where the lawsuit is not a *bona fide* attempt to secure an adjudication of legal rights, but, rather, is motivated solely by a desire to promote a candidate's political campaign?

(3) Does the exception in Article V, § 27 allowing support in the form of "an individual's own volunteered personal time" mean only that a non-member may volunteer his personal services for *no* charge, or does it mean also that a non-member may volunteer his personal services for a charge which is less than the normal com-

mercial rate for those services, or on a contingent fee basis?

A statement of position reflecting the views of the undersigned attorneys on these three points is attached.

The reason why interpretations by the CCAC are needed at this time is as follows. There is a lawsuit now pending, *Sadlowski v. USWA, et al.*, Civil Action No. 79-2953 (D.D.C.), in which it is alleged, *inter alia*, that Article V, § 17 violates § 101(a)(4) of the LMRDA, 29 U.S.C. § 411(a)(4), because it interferes with the right of USWA members to institute lawsuits relating to union affairs. The charge of illegality rests upon two assumptions as to the meaning of Article V, § 27:

> (1) that Art. V, § 27 prohibits the solicitation or acceptance of non-member monies to finance lawsuits asserting candidates' (or union members') legal rights; and
>
> (2) that Art. V, § 27's exception for "volunteered personal time" would allow a lawyer to represent a client without charging *any* fee for his personal services, but would not allow the client to agree to a contingent fee, or to a fee which is less than the lawyer's normal commercial rate for his personal services.

The union's undersigned lawyers believe these interpretations to be incorrect. However, Art. V, § 27 provides: "With respect to the administration of this Section 27, decisions of the Committee shall be final and binding, and not subject to review by any tribunal within the Union." Thus, only the CCAC has authority to render controlling interpretations of Art. V, § 27 with respect to the three matters listed above. It is the desire of the Union's attorneys that before the court rules on the pending legal challenge the court have the benefit of interpretations of Art. V, § 27 by the CCAC on these matters.

Hearings on motions which both sides have filed in the *Sadlowski* case are likely to be held in May. Accordingly, if the court is to have the benefit of interpretations by the CCAC, it would be necessary for the CCAC to act very promptly, and we so request. To that end, we are prepared to cooperate in whatever procedures the CCAC might wish to utilize to facilitate its consideration of this matter (e.g., a hearing before the CCAC itself, or a hearing before the CCAC's Staff Counsel, or written submissions).

In view of the fact that the requested interpretations relate to a pending lawsuit, we assume that the CCAC will furnish copies of this letter and the attached statement of position to counsel for the plaintiffs in *Sadlowski*, and will afford the undersigned and plaintiffs' counsel equal opportunities to participate in whatever procedues the CCAC decides to follow in resolving this matter.

For the information of the CCAC and its Staff Counsel, we are enclosing herewith the legal pleadings which have been filed in *Sadlowski v. USWA* bearing upon the above-described § 101(a)(4) issue, specifically:

(1) Complaint (see, particularly, Count IV, at pp. 16-18);

(2) Memorandum of Defendant United Steelworkers of America, AFL-CIO-CLC In Support of Motion to Dismiss Or, In the Alternative, for Summary Judgment (see, particularly, pp. 37-40;

(3) Memorandum of Points and Authorities in Opposition to Defendant USWA's Motion and In Support of Plaintiff's Motion For Summary Judgment (see, particularly, pp. 33-41).

Respectfully,

/s/ Michael H. Gottesman
MICHAEL H. GOTTESMAN
Bredhoff, Gottesman, Cohen
& Weinberg
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036

/s/ James D. English, by mg
JAMES ENGLISH
United Steelworkers of America
Five Gateway Center
Pittsburgh, Pennsylvania 15222

cc: Willard Wirtz, Chairman, CCAC
David Lewis, Member, CCAC
Eric Springer, Member, CCAC

STATEMENT OF POSITION OF UNION'S ATTORNEYS WITH RESPECT TO QUESTIONS OF INTERPRETATION POSED IN LETTER OF APRIL 3, 1980

The undersigned attorneys for the Union submit this Statement of Position with respect to the questions of interpretation posed in their letter of April 3, 1980.

1. Does Aricle V, Section 27 prohibit the solicitation or acceptance of monies (or other things of value) from non-members to finance lawsuits asserting candidates' (or other union members') legal rights in connection with elections?

With the possible exception of a lawsuit which is not *bona fide* (see 2, below), Art. V, Section 27 does *not* prohibit the solicitation or acceptance of monies (or other things of value) from non-members to finance lawsuits which assert a candidate's (or other union members') legal rights in connection with an election.

Article V, § 27 forbids the acceptance of outsiders' "support" by candidates and their supporters. The "support" to which Art. V, § 27 refers quite evidently is support of candidacy. Although a successful lawsuit may affect a candidate's fortunes (both by securing his legal rights and by garnering incidental publicity), there is a qualitative difference between a lawsuit and a traditional act of candidacy. A lawsuit is not an internal union political event, but, rather, the invocation of the government's most sacred protection—the mantle of the judiciary. A union's rules should not be construed to effect an inhibition upon invoking judicial protection unless they clearly so provide. There is nothing in Art. V, § 27 to suggest that it was intended to inhibit access to the courts, and the CCAC should not construe it to have that effect.

2. If the answer to (1) is generally "no", is a different answer warranted where the lawsuit is not a *bona fide* attempt to secure an adjudication of legal rights, but, rather, is motivated solely by a desire to promote a candidate's political campaign?

We are not sure what the correct answer should be. We set forth below the competing considerations, together with some observations as to possible ways to accommodate those competing considerations.

On the one hand, a lawsuit which is not a *bona fide* attempt to secure an adjudication of legal rights, but is, rather, a political stunt designed solely to advance one's candidacy (e.g. by securing media coverage, or by creating an "event" which can be the subject of campaign rhetoric) is not rationally distinguishable from any other political event. That the event is staged on a judicial doorstep does not invest it with that special quality, discussed in (1) above, which inheres in *bona fide* efforts to secure judicial protection.*

On the other hand, to treat lawsuits which are *not* "bona fide" differently from those which *are* "bona fide" could deter members from bringing "bona fide" lawsuits out of fear that the CCAC might later misjudge the member's motives and visit sanctions.

Given the importance that Art. V, § 27 not be construed in a manner which would inhibit *bona fide* access to the courts, the CCAC should not declare Art. V, § 27 applicable even to non-*bona fide* lawsuits unless it is satisfied that adequate safeguards can be provided to assure

---

* Of course, even if non-*bona fide* lawsuits were treated as ordinary political events, the time which lawyers and/or other non-members volunteered in connection with such lawsuits would be legitimate, for "an individual's own volunteered personal time" may be donated for pure politicking.

that there will not be deterrence of *bona fide* lawsuits. Two possible safeguards occur to us:

(a) The CCAC could rule that every lawsuit will be presumed *bona fide* unless the court entertaining the lawsuit expressly declares the suit *not bona fide*. Courts have existing power to visit economic sanctions upon plaintiffs who bring lawsuits which are not *bona fide* (see, e.g., *Alyeska Pipeline Co. v. Wilderness Society*, 421 U.S. 240, 258-259 (1975)) and if members were assured that Art. V, § 27 would apply only in such cases (and that the CCAC would not independently assess *bona fides*) there would be no enlargement beyond the class of cases in which a deterrent already exists.

(b) This limitation alone might not be sufficient, for a candidate might be willing to risk economic sanctions and yet still be deterred by the fear that the CCAC might disqualify him (see Art. V, § 27(d)). To avoid the potential deterrent effect of that greater sanction, the CCAC could rule that it will not disqualify candidates for using non-member monies to institute lawsuits even where the court declares that the suit was not *bona fide*. The CCAC could instead direct steps designed to cure the violation (e.g. requiring the return of the non-member monies used to finance the lawsuit).

Whether these possibilities, or others which might occur to the CCAC, are sufficient to eliminate any deterrent to the filing of *bona fide* lawsuits, and thus to permit application of Art. V, § 27 to suits which are not *bona fide*, is a matter for the CCAC to decide. We take no position, other than to note that the question is one to which an answer from the CCAC is needed if the court in the *Sadlowski* case is to have the benefit of a definitive construction of Art. V, § 27 before it rules.

3. Does the exception in Article V, § 27 allowing support in the form of "an individual's own volunteered personal time" mean only that a non-member may volunteer his personal services for *no* charge, or does it mean also that a non-member may volunteer his personal services for a charge which is less than the normal commercial rate for those services, or on a contingent fee basis?

Art. V, § 27 permits a non-member to donate his or her "own volunteered personal time" to supporting a candidate. Plainly, this means that a professional who would ordinarily charge a fee for his personal services may donate those services free of charge. *A fortiori*, it means also that such a professional can donate those services at a fee which is less than the normal commercial rate charged for those services. If a professional can donate services in their entirety, *a fortiorari* he or she can donate them partially while charging for them partially. If, for example, a professional's commercial rate for services were $50 per hour, it would be preposterous to construe Art. V, § 27 as permitting a charge of $50 or of no dollars, but not of $25.

Analytically, Art. V, § 27 has declared the donation of volunteered personal time to be outside the ambit of prohibition. Accordingly, it does not matter what (if anything) is charged for such volunteered time: there cannot be a violation of Art. V, § 27. For the same reason, a professional can donate personal services free of charge (or at a reduced rate) with the understanding that an additional amount may be received in the event of a contingency.

/s/ Michael H. Gottesman
MICHAEL H. GOTTESMAN

/s/ James D. English
JAMES D. ENGLISH

KLEIMAN—EXHIBIT E

Law Offices
HIGHSAW, MAHONEY & FRIEDMAN, P.C.
Suite 210
1050 Seventeenth Street, N.W.
Washington, D.C. 20036

April 24, 1980

Richard H. Gottesman, Esquire
BREDHOFF, GOTTESMAN, COHEN & WEINBERG
1100 Connecticut Avenue, N.W.
Washington, D.C. 20036

Re: Request of Michael Gottesman and James D. English on Behalf of the United Steel Workers of America, dated April 3, 1980, addressed to the Campaign Contribution Administrative Committee

Dear Mr. Gottesman:

As I reported to you yesterday by telephone, the Campaign Contribution Administrative Committee, in its executive session earlier in the day, considered the above request in the light of the comments thereon. The Committee decided to set the matter down for full consideration in its next executive meeting upon the basis of memorandum to be submitted to the Committee by the parties no later than May 7, 1980. The Committee asked that you prepare a detailed analysis of the following points:

1. Does the above request present an appropriate subject for consideration by this Committee at this time under the circumstances;

KLEIMAN—EXHIBIT E

Law Offices
HIGHSAW, MAHONEY & FRIEDMAN, P.C.
Suite 210
1050 Seventeenth Street, N.W.
Washington, D.C. 20036

April 24, 1980

Richard H. Gottesman, Esquire
BREDHOFF, GOTTESMAN, COHEN & WEINBERG
1100 Connecticut Avenue, N.W.
Washington, D.C. 20036

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1. Does the above request present an appropriate subject for consideration by this Committee at this time under the circumstances;

2. Does Article V, Section 27 of the Constitution of the international union, United Steel Workers of America and the regulations issued thereunder impose limitations upon sources of financial support for litigation to secure legal rights of candidates or potential candidates for elective offices within the union or of the supporters of candidates or potential candidates for such offices, and, if so, to what extent; and

3. Does Article V, Section 27 of the USWA Constitution and of the regulations issued thereunder, impose any limitations upon sources of financial support for legal services, other than litigation, with respect to legal rights and obligations of candidates or potential candidates for elective offices within the union or of supporters of candidates or potential candidates for such office, and, if so, to what extent.

Your memorandum should be filed with me no later than May 7, 1980, and should be served upon the parties at that time.

If there are any questions, please do not hesitate to call me.

Sincerely,

HIGHSAW, MAHONEY & FRIEDMAN, P.C.

EDWARD D. FRIEDMAN
Counsel to the Committee

KLEIMAN—EXHIBIT F

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 73-957

RAY MARSHALL, Secretary of Labor,
UNITED STATES DEPARTMENT OF LABOR
Plaintiffs

v.

UNITED STEELWORKERS OF AMERICA
AFL-CIO-CLC (District 31),
Defendant

v.

EDWARD SADLOWSKI,
Intervenor

JOSEPH L. RAUH, JR.; LEON DESPRES;
KENNETH J. YABLONSKI; and JUDITH SCHNEIDER,
Applicants for Attorneys' Fees

MAGISTRATE'S REPORT AND RECOMMENDATION

I. *Recommendation*

It is respectfully recommended that the verified application for counsel fees be denied.

II. *Report*

Presently before the Court for disposition is a "Verified Application for Attorneys' Fees" submitted by counsel for the intervenor.

On February 23, 1973, Edward Sadlowski wrote a letter to the Secretary of Labor ("the Secretary") protesting the February 13, 1973 election for Director of District 31 of the United Steelworkers of America ("USWA"). Specifically, Sadlowski alleged that in conducting that election, the Steelworkers failed to provide adequate safe-

guards to assure a fair election in District 31, and as a result, he was defeated in his bid for the position of Director of that district.

Following investigation, on November 8, 1973, the Secretary commenced this civil action challenging the election in District 31, and seeking *inter alia* to have the February 13, 1973 election declared null and void, and an order directing that a new election be conducted.[1] On January 18, 1973, Sadlowski was permitted to intervene as a party plaintiff in this suit pursuant to the limited authority contained in *Trbovich* v. *Mine Workers*, 404 U.S. 528 (1972).

After extensive negotiations, on August 2, 1974, a proposed settlement agreement was submitted to the Court for approval. That agreement did not contain any admission of impropriety in the conduct of the election, but provided that a new election for the office of Director of District 31 be held on or before November 29, 1974, under the supervision of the Secretary and in accordance with Title IV of the LMRDA, 29 U.S.C. § 481.

This settlement agreement was approved by the Court on August 23, 1974, with the modification that the election be conducted on or before November 19, 1974. However, the Court retained jurisdiction over the action until the results of the election were certified by the Secretary and an appropriate final decree entered.

On November 29, 1974, a certificate of election was filed by the Secretary, certifying that the intervenor had been elected Director of District 31. In an Order and Decree dated December 2, 1974, it was adjudicated that Edward Sadlowski was the duly elected Director of that district.

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[1] At the time this suit was commenced, the Secretary brought action against both District 31, and District 15. However, the suits against the two different districts were separated on January 21, 1974, and we are here concerned only with that suit challenging the election in District 31.

On January 31, 1975, Joseph L. Rauh, Jr., Leon Despres, Kenneth J. Yablonski and Judith Schneider, counsel for the intervenor, filed the pending application for counsel fees.

Following a hearing on the matter, and in a Report and Recommendation filed on July 22, 1975, the undersigned United States Magistrate concluded that as a matter of law, the recovery of attorneys' fees was precluded under Title IV of LMRDA, and that the application for fees should be denied. Counsel for the intervenor filed exceptions to that Report and Recommendation and the matter came on for further hearing. In a Memorandum filed on December 11, 1975, the District Judge overruled the exceptions to the Magistrate's Report and Recommendation, and adopted the latter as the opinion of the Court.[2]

An appeal was then taken to the United States Court of Appeals for the Third Circuit. Speaking for the majority of that Court, Judge Van Dusen held that as a matter of law, attorneys' fees were not precluded under Title IV of LMRDA, and that the matter must be remanded to the district court for a determination of whether it would be equitable to award counsel fees on a "common benefit theory, and if such an award was appropriate, a computation of an appropriate dollar amount. *Brennan* v. *United Steelworkers of America, Etc.*, 544 F.2d 586 (3d Cir. 1977).[3] Judge Aldisert dissented from the majority and filed a separate opinion.[4]

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[2] It should be observed that the discussion of the District Judge in his Memorandum was somewhat broader in scope than the narrow issue determined by the Magistrate.

[3] In a footnote to an Order filed on June 3, 1977 in response to a motion for leave to file an enlarged petition for rehearing, Judge Van Dusen reiterated that the matter was remanded, ". . . solely for reconsideration in the light of the controlling authorities on statutory preclusion and 'common benefit' ".

[4] *Brennan* v. *United Steelworkers of America, Etc.*, 554 F.2d 633.

An application for certiorari was filed in the Supreme Court, and on April 17, 1978 certiorari was denied. 435 U.S. 977 (1978). However, Justice White, joined by Justices Stewart and Rehnquist dissented from the denial of certiorari and stated:

> "The common-benefit exception has in this case been stretched beyond the bounds of its creative rationale, both as to whether a benefit has been shown to exist at all, given the Secretary's dominant enforcement role, and as to whether it is fair to tax the entire union with costs of providing what benefits there might be." 435 U.S. at 980.

The reasoning of the majority of the Third Circuit, Justice White said, was "squarely at issue" with the Court's previous decisions in *Alyeska Pipeline Co.* v. *Wilderness Society*, 421 U.S. 240 (1975).

Thus, the case is presently before this Court again, on remand with the specific instruction,

> "Having held that the award of equitable relief is not precluded by Title IV of the LMRDA, and that the intervenor may be entitled to attorneys' fees based upon a common benefit conferred upon the USWA, the district court order and opinion will be reversed, and the case remanded for findings and reconsideration of the liability of the defendant for attorneys' fees.
>
> "Whether an award is warranted and, if so, the amount of such award, is a matter for initial determination by the district court in the light of the broader application of the 'common benefit' rationale. . ." 554 F.2d at 608.

In *Hall* v. *Cole*, 412 U.S. 1, 4-6 (1973), the Court stated that:

> "Although the traditional American rule ordinarily disfavors the allowance of attorneys' fees in

> the absence of statutory or contractual authorization, federal courts, in the exercise of their equitable powers, may award attorneys' fees when the interests of justice so require. Indeed, the power to award such fees 'is part of the original authority of the chancellor to do equity in a particular situation . . . and federal courts do not hesitate to exercise this inherent equitable power whenever 'overriding considerations indicate the need for such a recovery . . .'
>
> • • • •
>
> "Another established exception involves cases in which the plaintiff's successful litigation confers 'a substantial benefit on the members of an ascertainable class, and where the court's jurisdiction over the subject matter of the suit makes possible an award that will operate to spread the costs proportionately among them.' . . . 'Fee shifting' is justified in these cases, not because of any 'bad faith' of the defendant but, rather, because '[t]o allow the others to obtain full benefit from the plaintiff's efforts without contributing equally to the litigation expenses would be to enrich the others unjustly at the plaintiff's expense' . . ." (footnotes omitted).

That is, the common benefit theory justifying the award of attorneys' fees rests on sound equitable principals which require those who benefit to share the costs of obtaining that benefit.

More recently, in *Alyeska Pipeline Co.* v. *Wilderness Society*, 421 U.S. 240, 257 (1975), the Court recognized,

> ". . . the historic power of equity to permit the trustee of a fund or property, or a party preserving or recovering a fund for the benefit of others in addition to himself, to recover his costs, including his attorneys' fees, from the fund or property itself or directly from the other parties enjoying the benefit . . ."

Nevertheless, the Court cautioned:

> ". . . [federal] courts are not free to fashion drastic new rules with respect to the allowance of attorneys' fees to the prevailing party in federal litigation or to pick and choose among plaintiffs and the statutes under which they sue and to award fees in some cases but not in others, depending upon the courts' assessment of the importance of the public policies involved in particular cases. Nor should the federal courts purport to adopt on their own initiative a rule awarding attorneys' fees based on the private-attorney-general approach when such judicial rule will operate only against private parties and not against the Government." 421 U.S. at 269.

Thus, it is only within very narrow confines that the equitable principal of awarding counsel fees on a common benefits basis can be allowed.

The petitioners here allege that their enhancement of union democracy through the rerunning of the election for Director of District 31, conferred a benefit upon not only District 31, but upon the entire USW membership in two ways. First, they contend that the Director of District 31 sits on the International Executive Board, which is the governing body of the USW and that therefore his election to that body benefits the entire union membership. The second argument raised by the fee applicants is that by rerunning the election in District 31, the entire membership of the USW was put on notice that election improprieties will not be tolerated.

Against this background, a determination must be made of whether or not the "common benefit" doctrine is applicable to the instant case so as to justify an award of attorneys' fees. As the Court of Appeals made clear,

> "The overriding considerations in evaluation of 'common benefit' claims are whether the benefits may

> be traced with some accuracy; whether the class of beneficiaries is readily identifiable; and whether there is a reasonable basis for confidence that the costs may be shifted with some precision to those benefiting." 554 F.2d at 604-605.

Thus, inherent in this concept is a requirement that a benefit be bestowed; that that benefit may be traced with some accuracy to the class which it proports to benefit; that the class of beneficiaries be readily identifiable, and finally that the costs may be transferred with some precision to the persons deriving benefits.

On February 13, 1973, an election was held for the position of Director of District 31, USAW, in which the intervenor was the unsuccessful candidate. By letter dated February 23, 1973, a protest was delivered to the Chairman of the International Tellers. Following their investigation and on or about April 25, 1973, the Tellers submitted a report sustaining the election results. By letter dated May 1, 1973, the intervenor appealed this decision to the International Executive Board. On May 31, 1973 that Board met, considered the complaint and sustained the Tellers' Report. The decision was communicated to the intervenor by letter dated June 4, 1973, and on June 25, 1973 he filed a complaint with the Secretary of Labor pursuant to 29 U.S.C. § 482(a). Through agreements between the Secretary and counsel for the defendant extensions of time were granted to permit the Secretary to conduct his investigation and determine whether or not to commence suit. Finally, on November 8, 1973 this suit was initiated.[5] In an Order dated January 17, 1974, Sadlowski was permitted to intervene as a party plaintiff in the District 31 action

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[5] This suit was initially commenced as an action challenging the election on both District 15 and District 31, and by Order dated January 21, 1974 the challenges were bifurcated into two separate actions at the same Civil Action number but containing separate "A" and "B" designations.

only. An amended complaint was filed on January 28, 1974, and an answer to the complaint was filed on February 12, 1974. Finally, on August 23, 1974 a settlement agreement was approved providing in part that a new election be held on or before November 19, 1974. On December 2, 1974 a final judgment was entered designating the intervenor to be the duly elected director of District 31. On January 31, 1975 the pending verified application for attorneys' fees was filed.

The first issue for resolution is a determination of whether or not there was a benefit bestowed as a result of the actions of the intervenor.

Counsel for the Intervenor contend that their services conferred a common benefit on the USWA members both of District 31, and upon the entire membership by enhancing union democracy, by expeditiously voiding an improper election and causing the successful election of the Intervenor. Specifically, they allege:

> . . . the services of the attorneys enabled Sadlowski to present a proper protest within the union, under a tight deadline, and to the Secretary of Labor and thereby enabled Labor to later file an effective suit; facilitated the Department's own investigation; effectively represented Sadlowski before the Labor Department offsetting the defendant's efforts by a battery of lawyers to abort a suit and successfully urged the Department to bring suit without further delay; secured Sadlowski's intervention in the court case and thereafter cooperated with and prodded the Department in analyzing the plaintiff's case and in discovery procedures assuming all responsibility for depositions; successfully pressed for a speed-up of the litigation; pointed out to Labor the dangers in and blocked undemocratic and unfair settlement proposals advanced by defendant; helped secure, if not caused the securing of, the settlement by the defendant calling for a new election under fair conditions; secured significant modifications, written

and oral, in the settlement which was then approved by the Court; and thereafter helped assure that the rerun election procedures were in fact carried out in a model, democratic fashion by representations to the Secretary in Washington and his representatives in Chicago and by carrying on an effective, grass-roots monitoring and reporting system in Chicago which Labor was unable to do on its own; and bringing about the return of important files of District 31 which had been removed before Sadlowski assumed office. The result was that Sadlowski was elected by a two-to-one margin in the court-ordered, Labor-supervised 1974 rerun election over the incumbent. . ." [6]

Counsel for the Intervenor first claims that their services enabled Sadlowski to present a proper protest within the tight deadline mandated by the union constitution.

The Steelworker's constitution requires that an individual challenging an election must do so within ten days of the election by filing a protest with the International Tellers.[7]

In the present case, the election was held on February 13, 1973, and ten days later, on February 23, 1973, the intervenor filed a protest with the International Tellers.[8] However, during this ten-day period, the Intervenor believed himself inadequate to determine whether or not

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[6] Intervenor's Narrative Statement of Facts in Support of Application for Attorneys' Fees, p. 2-3.

[7] Article V. Section 18, Constitution of International Union United Steelworkers of America. Sadlowski Deposition Ex. 3 (Document No. 147).

[8] The protest of the Intervenor to the International Tellers appears as Exhibit 1 to the Rauh Deposition taken on November 6, 1978 (Document No. 129).

there were grounds upon which to protest the election and therefore turned to Mr. Despres for legal counsel.[9] Despres' records indicated that he had devoted 13.5 hours from the time of his initial contact with the Intervenor to the filing of the protest.[10] Thereafter, Despres contended that he supervised the protest procedure until the May 1, 1973 filing of an appeal to the International Executive Board from the adverse determination of the International Tellers. Although his records only disclose an additional 3.2 hours during this time interval, a closer examination reveals that of this time 1.2 hours was devoted to drafting a letter to the intervenor which is clearly political in nature,[11] and two hours devoted to work for his client on the day that the protest was filed with the Executive Board.[12]

The question then becomes one of determining whether or not legal counsel was required in order to frame such a protest. In his deposition, Rauh indicated that the assistance of legal counsel is necessary.[13] However, this is to be contrasted with the testimony of Lagather, of the Department of Labor, who stated that for a protest to be in a proper posture for the Department of Labor to investigate, it is not necessary that precisely detailed protests be filed with the union, but rather that generally stated objections be made.[14] In *Hodgson* v. *Steelworkers*, 403 U.S. 333 (1971), and *Wirtz* v. *Laborers Union*, 389 U.S. 477 (1968) the Court emphasized that the internal

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[9] See pages 80-81, 93 of the deposition of Sadlowski (Document No. 147).

[10] Exhibit 1, to the Despres Deposition (Document No. 145) which appears as Document No. 146.

[11] Exhibit 3 to the Despres Deposition (Document No. 146).

[12] Exhibit 1 to the Despres Deposition (Document No. 146).

[13] Rauh Deposition of November 6, 1978 (Document No. 129 at pp. 29-30).

[14] Lagather deposition (Document No. 143) at pp. 48-52.

exhaustion procedures must be geared to be exercised by a layman. In the present case, the USWA Constitution provides that protests be made within specified time limitations, but no requirement is established for a format which such protests must follow.

While the record establishes that prior to the election, Sadlowski had contacted the Department of Labor in order to determine whether he could receive post-election assistance from the Department in preparing his protest. Sadlowski testified that he had been told that the Department could not become involved until after the election.[15] By way of contrast, Lehman of the Department of Labor testified that prior to the election he had been contacted on behalf of Sadlowski and explained the mechanics of filing a protest.[16] In addition, the defendant contends that an individual with Sadlowski's knowledge of the internal workings of the union and considerable experience in various functional capacities within the union, should certainly have been capable of filing an internal protest without outside assistance.[17] In addition, Sadlowski testified that he was aware of several areas of irregularity in the conduct of the election, before he ever met with Despres.[18]

When specifically asked,

> ". . . is it your testimony that notwithstanding all that we just said, that you wouldn't have been able to find these problems and this conduct without Mr. Despres' investigative planning?"
>
> "A. No."

* * * *

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[15] Sadlowski deposition, page 99 (Document No. 147).

[16] Lehman deposition, page 11 (Document No. 179).

[17] Sadlowski deposition, pages 5-68 (Document No. 147).

[18] *Id.*, pages 102-111.

"A. As I understood the question, you said I wouldn't have been able to find them without Despres.[19] The answer to that is no, I didn't say that."

However, Sadlowski clarified this comment:

"I don't know if they would have surfaced or not. I really don't know what kind of question is that. I don't know. . .

"But I would imagine that most of these would have surfaced somewhere down the line as they ultimately do, guys start talking and drinking. I don't know what kind of question that is. You know, I can't answer that because I don't know the answer to that." [20]

That is, Sadlowski himself could not state with any degree of certaintly whether or not the services provided by his attorney were really necessary to discover irregularities.

It would therefore appear that prior to the election and immediately following the election, Sadlowski was aware of his internal rights and was prepared to exercise them. That he found it more comforting to have the assistance of privately retained counsel does not demonstrate that the services of counsel were necessary. Furthermore, the evidence from the Labor Department is strongly indicative of the fact that in order to preserve issues for presentation to the Secretary, only minimal requirements are imposed, and that these obligations can be readily fulfilled without the assistance of counsel.

The Intervenor places some degree of reliance on the first affidavit of Stephen Ernst [21] in which it is stated:

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[19] *Id.*, page 115.

[20] *Id.*, pages 120-121.

[21] This affidavit appears as Exhibit 17A to the first deposition of Joseph Rauh (Document No. 129).

> "It is my opinion that institution of the Department of Labor's complaint, the successful termination of the litigation through a negotiated settlement, and the legal conduct of the rerun election were primarily the result of the Department of Labor's efforts, and in part my own, which were extensive and time-consuming. Nevertheless, I believe it is also true that Mr. Sadlowski's lawyers provided benefit to him and to the Department of Labor by, among other things, seeing to it that Mr. Sadlowski's rights to complain to the Secretary (and thereby enabling the Secretary to file a complaint) were preserved through Sadlowski's observance of the Steelworkers' detailed internal constitutional requirement. . ."

That is, it was the opinion of Stephen Ernst, who was the lead litigation and trial counsel for the Department of Labor in this suit, that Sadlowski's counsel aided Sadlowski in preserving his rights, but no showing has been made that the assistance of counsel was necessary to preserve these interests. Rather, the record here is highly indicative of the fact that the assistance of counsel was not in any way necessary to preserve matters for presentation to the Secretary.

We first have the statements of personnel from the Department of Labor supported by decisions of the Supreme Court that the internal union protest procedures are designed to insure that an individual can readily protect his rights. Secondly, there is the testimony of Sadlowski himself that the elements raised in his protest were basically secured without the aide of counsel, and that while it is highly speculative, it would appear that the assistance of counsel would not have been necessary to gather the various elements of the protest. And finally, there are the records of counsel which indicate that little if any time was devoted to assisting his client in preparing the protest. From all these elements, it would

appear that the assistance of counsel was unnecessary, and that counsel performed little if any service to furthering the Intervenor's protest.

On or about April 25, 1973 the International Tellers rejected Sadlowski's challenge to the election, and on May 1, 1973 Sadlowski wrote to the International Executive Board protesting the election. Through this time, only Despres was involved in the litigation as counsel for the intervenor.

On May 31, 1973, the International Board sustained the election, and the Intervenor's internal remedies had been exhausted.[22] The next step was to file a protest with the Secretary, and this was done on June 25, 1973.[23] While this document is lengthy, it is also true that Despres' records disclose that he only spent 4 hours on its preparation [24] and could only account for his participation in the preparation of a very limited portion of this document.[25]

Furthermore, it is even doubtful if this effort was necessary, since as Lagather explained, a complaint filed with the Department of Labor must only set forth basic allegations, and need not be a formal legal document. Specifically, he responded affirmative to the inquiry,

> ". . . we have been talking about the substance of the member's complaint to the union. Is the same thing true of the complaint he files with the Labor Department, that is, that if he makes general allegations without evidentiary detail and without citing the union constitution provisions or the law, that is

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[22] Article V, Section 21, Constitution of International Union, Ex. EX-3 to Sadlowski Deposition (Document No. 147).

[23] The protest is D-43 appended to the Despres deposition (Document No. 146).

[24] Exhibit D-1 to Despres deposition (Document No. 146).

[25] Pages 130-132 of Despres Deposition (Document No. 145).

sufficient to invest the department with jurisdiction to investigate and ultimately to sue?" [26]

Ronald S. Lehman, who had charge of the investigation of this matter for the Department of Labor,[27] testified that he had rendered advisory information to the Intervenor or his agents prior to the filing of the suit with the Secretary,[28] and was assigned the matter when the complaint was filed with the Department. Upon receiving the complaint he had an informal interview with Sadlowski to review the allegations of the complaint, and followed this with an "exhaustive" interview, and investigation.

Thus, the matter had moved from a protest within the union to the Secretary of Labor with little if any actual input from counsel for the Intervenor, and if in fact such counsel occurred, it is extremely doubtful whether that assistance was necessary to preserve the right to protest the election.

The next period of time is from the filing of a complaint with the Department of Labor on June 25, 1973 through the August, 1973 recommendation of the Department to file suit. During this period of time, intensive investigation by the Secretary occurred, and by August it was apparent that unless the matter could be amicably settled, that suit would be brought.

In his affidavit, William J. Kilberg, who at the time in question was the Solicitor for the Department of Labor, stated:

". . . In early August, 1973, shortly after these reports arrived in Washington, I was told by Robert Lagather, Deputy Assistant Secretary of Labor, that

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[26] Page 52, Lagather Deposition (Document No. 143).

[27] Pages 3-4 of the Lehman Deposition (Document No. 179).

[28] *Id.*, at pages 7-13.

> District 31 was the case where the investigative findings most clearly indicated that suit should be filed. From that point forward, every report I received confirmed the unanimity among the Department's employees, both in the field and in Washington, that suit was warranted with respect to District 31. Looking back, it is clear that at no point in time, once the field investigation had been completed in early August, was there ever any doubt that, short of a satisfactory settlement, the Department would sue in District 31." [29]

While suit was not commenced immediately, it was explained by Kilberg that the delays were made in an effort to permit the USWA to investigate the election.[30] However, the Intervenor contends that repeated extensions in the time within which suit could be brought were granted as a delaying tactic. For this reason, the intervenor contends it became necessary to retain someone familiar with Labor proceedings, and so on August 30, 1973, Despres contacted Rauh in order to enlist his support. Nevertheless, the letter from Despres to Rauh enlisting his support belies this stated motive, and makes clear that the intent was to mount a new campaign for Sadlowski. In that letter Despres wrote,

> ". . . the Department of Labor has found fraud and defects far beyond the ability of the independent group itself to uncover and detect. A new election seems likely. . .
>
> "The problem now is that, in the light of a new campaign, Sadlowski might find it very valuable to have suits started for large amounts of damages arising out of fraud . . .

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[29] Page 4 of the Kilberg Affidavit (Document No. 160).

[30] *Id.*

> "I am perfectly willing to call [the Department of Labor], but with the disclosures of Watergate, I do not know how communicative a highly placed official would be by long distance telephone call to Chicago. Can you speak to him? Can you obtain encouragement or information that might help Sadlowski in the campaign?" [31]

Thus, the allegation that Rauh's support was enlisted to ensure that the Department of Labor carried forward its investigation and rapidly concluded the matter is contradicted by the Despres letter in which he seeks Rauh's aide for the purpose of furthering Sadlowski's campaign.

The fee applicants claim that Rauh's interest in the suit and his intervention "caused Labor to file suit." The record contradicts this contention.

In his first deposition, Rauh contended that his function was urging the Department of Labor to bring suit, and in this regard he had three or four conversations with Mr. Lagather.[32] Despite what Mr. Rauh considered his primary function, the record indicates that the Department of Labor had already reached a conclusion that either an amicable settlement be concluded or that suit be filed. In his affidavit Solicitor Kilberg stated:

> ". . . Mr. Lagather advised me that he had received one or more phone calls from Joseph Rauh on behalf of the District 31 complainant, Edward Sadlowski, urging that the Department file suit with respect to the District 31 election. Mr. Lagather's report of Mr. Rauh's phone calls played no part in my decision to file suit in District 31. Mr. Lagather did not tell me that Mr. Rauh had provided any factual information which was not already in the

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[31] Exhibit D-4, to Despres deposition (Document No. 146).

[32] Pages 35-36 of the November 6, 1978 deposition of Joseph L. Rauh, Jr. (Document No. 129).

> Department's files, nor that Mr. Rauh had advanced any legal arguments which we had not already considered . . . The mere fact that lawyers representing private parties urged the Department to act one way or another, by itself, had no effect on the decisions I made while Solicitor of Labor; my decisions were based on the evidence available to me. In the District 31 matter, the evidence already in the Department's files had convinced me that suit should be brought . . ." [33]

And finally, Rauh himself stated in a letter to Despres,

> ". . . the thing you really asked me to do was to insure the filing of the suit by the Secretary of Labor. Although I did everything I could on that, it is not unlikely that the suit would have been filed if I hadn't been in the case at all." [34]

Thus, it would appear that Rauh himself admitted the validity of the Secretary's contention that his entry into the suit was of no consequence to the Secretary's decision to commence this action. While suit was not commenced immediately upon the receipt of all evidence recommending such action in August 1973, it has been explained that suit was not filed until November 8, 1973, in an accommodation reached with the USWA, and not out of dereliction of duty or intention to avoid an unpleasant task.

We must next turn our attention to the role played by the Intervenor once the Secretary filed suit.

It is a matter of record that the complaint was filed on November 8, 1973, and that pursuant to Court approved stipulations, the time for filing an answer was extended on three separate occasions. On January 21, 1974 the complaint was separated into two causes of

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[33] Page 5, Kilberg affidavit (Document No. 160).

[34] D-6 to the Despres deposition (Document No. 146).

action, one as to District 15 and the other as to District 31. A week later on January 28, 1974, an amended complaint was filed so as to set forth a claim as to District 31 exclusively, and on February 12, 1974 an answer was filed. Pursuant to a motion by the Secretary an order was entered on March 21, 1974 providing for expedited discovery. That the desire to secure expediated disposition of the matter originated with the Secretary is apparent from the Ernst affidavit.[35]

While these applicants contend that their efforts caused the Court to establish an expedited discovery schedule, the record does not support this contention. At the hearing on the motion for expedited discovery, counsel for the Secretary and the USW agreed that although expedited discovery was highly desirable, certain commitments of counsel would prevent them from proceeding as rapidly as they desired. While Rauh opposed any delays, the Court rejected his position and agreed that discovery be conducted as rapidly as possible within the limitations of counsels' other commitments.[36]

While counsel for the intervenors allege that they strongly influenced the theory of prosecution that was being employed by the Secretary in preparing for trial, Ernst clearly stated:

> ". . . My theory of the case remained unchanged throughout the prosecution of the lawsuit and was not affected by anything said or done by counsel for intervenor." [37]

Thus, the discovery phase of litigation commenced. Counsel for the intervenor contended that prior to intervention there had been no discovery and thereby urges one to draw the implication that it was their intervention

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[35] Ernst Affidavit, paragraph 4 (Document No. 161).

[36] Document No. 33.

[37] Paragraph 6 of the Ernst affidavit (Document No. 161).

which initiated the discovery procedure. It should be noted that the intervention occurred prior to the filing of the amended complaint and the answer and prior to the initiation of formal pretrial proceedings. In addition, in his affidavit Ernst laid aside any possible inference that the efforts of counsel for the intervenor had any material bearing on the ultimate disposition of this case. He stated:

> ". . . as a result of that investigation [prior to filing the suit], I began the case with several file drawers full of materials and evidence in my office, and boxes of additional materials and evidence in the Chicago Regional Office of the Labor Management and Services Administration of the Department. With these materials and evidence, my case was more than complete without the need to engage in formal discovery. It was because my case was thus complete that I in fact engaged in little formal discovery, not because I was relying on counsel for the intervenor to do any discovery. If I had deemed it worthwhile to engage in additional discovery efforts, I would have done so; I would not have relied on counsel for intervenor to put the Department's case together. Indeed, in addition to the formal discovery processes, I had at my disposal a highly motivated and skilled staff of federal investigators; had I deemed further fact investigations called for I would have relied on these investigators, and not on counsel for intervenors . . .
>
> "As far as I know, the discovery taken by counsel for intervenor during the course of the District 31 litigation produced no useful evidence that I did not already have by virtue of the Department's investigation. As I have already stated, I was not relying on that discovery and certainly did not request that counsel for the intervenor undertake it." [38]

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[38] Paragraphs 5 and 7 of Ernst Affidavit (Document No. 161).

During this period, counsel for the intervenor took five depositions but it is also apparent that at least three of these depositions produced,

> ". . . marginally important information, all of which has a beneficial cumulative effect. . . The reason we felt it necessary to take these depositions was to compel these men to refuse to divulge payments out of USW funds for Evett campaign contributions or expenditures . . ." [39]

See also: Document No. 162, Kleinman Affidavit, paragraph 16. This is especially noteworthy in view of the fact that the intervenors were prohibited from raising finance issues in this case. *Trbovich* v. *Mine Workers*, *supra.*, at 537.

Applicants next claim credit for "Blocking of Unsatisfactory Undemocratic Settlement Proposals". Specifically, they claim credit for blocking an informal proposal to split District 31, and for preventing a multiple nomination election rather than a rerun of the two-way Evett-Sadlowski race.

It should be noted that the applicants' contention that they prevented a splitting of the District into two Districts is without merit since this proposal had been rejected by the Secretary prior to its ever having been communicated to the intervenor.[39a]

The intervenor also claims credit for prevention of multiple nominations.

The possibility of reopening nominations arose when it was believed that there was a possibility that Evett would not run again in a new election. In such an event,

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[39] Exhibit D-11 to the Depres Deposition (Document No. 146).

[39a] See: Kleinman Affidavit (Document No. 162). See also: Kilberg Affidavit (Document No. 160, ¶¶ 14, 23) and Lagather deposition (Document No. 143, pp. 37-38).

unless nominations were reopened, the intervenor would be the only candidate in the rerun election.[39b] However, when Evett agreed to be a candidate in the rerun election, the problem of reopening nominations vanished.[39c]

In view of the evidence which the Secretary had secured, an intense period of negotiations occurred between the Secretary and the USWA in an effort to arrive at a settlement which would be satisfactory to all concerned. However, during the negotiation process, counsel for the intervenor was excluded.[40] It would then appear that when a settlement was achieved, counsel for the intervenor refused to be a party to it and therefore the settlement agreement had to be redrafted excluding the intervenor as a party.[41]

Ultimately, the matter was presented to the Court for consideration, and set down for hearing on August 23, 1974. At that hearing, counsel for the intervenor raised several objections to the proposed settlement but finally conceded that "all my arguments have been overruled. . ." [42]

One main benefit which the intervenor attributes to his effort is the changing of the date set for the election. In the original proposed settlement agreement, it was provided that a rerun election "will be held on or before November 29, 1974." [43] The intervenors seized upon this cut-off date and alleged in their opposition to the settlement:

[39b] Kilberg Affidavit (Document No. 160, ¶ 18).

[39c] *Id.* paragraph 27, Kleinman Affidavit (Document No. 162 ¶ 14).

[40] Paragraph 22 of the English Affidavit (Document No. 167).

[41] *Id.* at paragraph 35.

[42] See: Transcript of hearing held on August 23, 1974 at p. 48.

[43] Paragraph 2 of the proposed settlement agreement (Document No. 53).

> "The postponement of the election until November 29, 1974 is a further unnecessary delay compounding the inordinate previous delays. The actual final date permitted by the proposed order is the day after Thanksgiving which will deny the right to vote to all those out of town over that weekend. . ." [44]

Intervenor now alleges that he was instrumental in having the election date changed from November 29, 1974 to an earlier date. However, even his own motion in opposition to the settlement agreement recognized that November 29 was an outside limitation, and as counsel has argued here, there was no intention of running the election on that date, but rather it was merely utilized as an outside cut-off date. That this is true is supported by documentary evidence.[45] Thus, the intervenor's claim that his efforts saved union democracy by preventing the election from being conducted during the Thanksgiving weekend is without merit.

Counsel for the intervenor also seek credit for assuring that certain procedures were complied with during the rerun election. However, the record demonstrates that the Court broadly approved conducting the election in conformity with union regulations, and Title IV.

Thus, the record reveals that the intervenor, an individual who was most familiar with union practices, could have prosecuted his internal appeals and application to the Secretary without the assistance of counsel. Once the Secretary became involved, extensive investigation was conducted by the Labor Department, and then negotiations entered into between the Secretary and the USWA. All this was prior to the permissive intervention in this suit. Once permitted to intervene, counsel for the inter-

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[44] Document No. 53.

[45] English Affidavit (Document No. 167 ¶ 31); Ernst Affidavit (Document No. 161, ¶ 11); Lagather Deposition (Document No. 143 pp. 46-48).

venor did pursue certain avenues of discovery, but at all times this discovery was unnecessary to the Secretary's investigation of whether or not improprieties occurred during this election. Having determined that improprieties had occurred, the Secretary entered into further discussions with the USWA in an effort to achieve an amicable settlement of the litigation. Once this settlement was achieved, it was unsuccessfully opposed by counsel for the intervenor, and ultimately a rerun election was conducted and the intervenor was the successful candidate.

The record does contain indications that counsel for the intervenor readily recognized the fruitlessness of their concern with the subject matter of having the election rerun, since they conceded that the Secretary had more than ample evidence to require a new election. Rather, the evidence discloses that counsel for the intervenor were concerned with assuring that their candidate be elected in the forthcoming rerun election, and therefore seized the opportunity to capitalize on the viability of this suit to further his election goal.

It warrants repeating that in *Hall* v. *Cole*, 412 U.S. at 5-6, the Court stated:

> "Another established exception involves cases in which the plaintiff's successful litigation confers 'a substantial benefit on the members of an ascertainable class, and where the court's jurisdiction over the subject matter of the suit makes possible an award that will operate to spread the costs proportionately among them. . . . 'Fee shifting' is justified in these cases, not because of any 'bad faith' of the defendant but, rather, because '[t]o allow the others to obtain full benefit from the plaintiff's efforts without contributing equally to the litigation expenses would be to enrich the others unjustly at the plaintiff's expense.' . . ."

As applies to the facts of the present case, the record does not substantiate the claim of the intervenor that his

actions benefitted the union as a whole. Rather, at best, his actions might have benefitted his own candidacy by creating certain campaign advantages. The Secretary in the present case, with his vast manpower, thoroughly investigated the election and determined that a rerun election was necessary and conducted that election. No activity of counsel for the intervenor influenced these matters.

As the Court stated in *Wolf* v. *General Motors-United Auto Wkrs., Etc.*, 569 F.2d 1266, 1238 (3d Cir. 1978):

> "The common benefit exception anticipates, and is necessarily preceded by, a proven causal relationship between the efforts of counsel and the benefits allegedly derived therefrom."

The record in this case reveals that the efforts of the Secretary brought about the satisfactory resolution of the election difficulties and that this same result would have been achieved with or without the efforts of counsel for the intervenor. That is, the efforts of counsel for the intervenor did not provide any substantial benefit either to the Secretary or to District 31 or the USWA, but at best served to assist the intervenor in assuring his success in the rerun election. Pursuant to the mandate of the Court of Appeals, 554 F.2d at 608, and for the reasons set forth above, it is determined that an award of counsel fees based on the "common benefit" rationale, is not warranted in this case.

For this reason it is respectfully recommended that the verified application for counsel fees be denied.

Respectfully submitted,

/s/ Robert C. Mitchell
ROBERT C. MITCHELL
United States Magistrate

Dated: June 7, 1979

DECLARATION OF LLOYD McBRIDE

1. My reasons for urging adoption of Article V, §27 were stated at the Convention (see Appendix G to the previously submitted affidavit of Lynn Williams). Those were my only reasons. I was not motivated by a desire to deter or prevent Edward Sadlowski, Jr.,—or anyone else, for that matter—from running against me. It was my belief then—and remains my belief now—that anyone with a candidacy sufficiently appealing to hold any hope of election will be able to raise as much money as he needs by requesting contributions from the 1.3 million members of USWA.

2. I have read the allegations in paragraph 6 of the Affidavit of Joseph Samargia filed in this case, where it is stated that after the election of Linus Wampler as District Director of USWA's District 33 in 1977, I "refused to appoint [to the USWA staff] anyone recommended by Wampler but instead designated three new staff all of whom had opposed Wampler's candidacy."

3. The fact is that I have appointed to the staff four individuals who were recommended by Director Wampler: Gordon Renner, Tom Hoffman, Eugene Skraba and Albert Ball. Attached to this declaration as Exhibit A are copies of the letters from Director Wampler to myself recommending the appointment of these four people, and my letters to Director Wampler approving the recommendations and appointing the four individuals to the USWA staff as probationary staff representatives (the status to which all new staff representatives are initially assigned). Furthermore, based on Director Wampler's subsequent recommendations that Messrs. Renner, Hoffman, Skraba and Ball be classified as permanent employees following the completion of their probationary periods, I approved those recommendations and designated

each of the four individuals as a permanent employee. The exchange of correspondence on that matter is attached to this declaration as Exhibit B.

4. Another individual who was recommended by Director Wampler for a staff appointment—James Powell—has been approved for assignment to the staff on a casual basis. The letter to me from Director Wampler recommending Mr. Powell is attached to this declaration as Exhibit C.

5. While appointing four individuals recommended by Director Wampler (five if Mr. Powell is included), I have also appointed to the staff, and assigned to District 33, three individuals he did not recommend: Herbert Larson, Carl Miller, and Delano Lords. In appointing those individuals I declined to appoint certain individuals recommended by Director Wampler, including Joseph Samargia. In each case, I was not satisfied that the individuals recommended by Director Wampler would be willing or able to carry out the policies of the Union. In no case was my decision based on whom (if anyone) the applicant had supported in the Union's election.

6. I have also read the allegations in paragraph 4 of the Affidavit of James Balanoff filed in this case, where it is stated that "on every occasion" I have "disregarded" the suggestions of Director Balanoff regarding appointments to the staff in District 31. It is true that in several instances I have appointed to the staff in that District individuals who had not been recommended by Director Balanoff, rather than others who had been so recommended. In each case, this was because I was not satisfied that the individuals who had been recommended by Director Balanoff would be willing or able to carry out the policies of the Union. Just as in the case of District 33, in no instance was my decision as to whom to appoint

to the staff in District 31 made on the basis of which candidate (if any) the applicants had supported in the Union's election.

7. What is more, Director Balanoff errs in asserting that I have rejected all of his recommendations for staff appointments. To the contrary, I appointed Rudolph Nichols, who was recommended by Director Balanoff. The letter of recommendation and my response are attached to this declaration as Exhibit D, together with my letter confirming Mr. Nichols as a permanent employee following Director Balanoff's oral request that I do so.

8. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Lloyd McBride
LLOYD MCBRIDE

Executed on this 24th day of April, 1980.

McBRIDE—EXHIBIT A

UNITED STEELWORKERS OF AMERICA

Linus E. Wampler, Director
District 33

609 Providence Building
Duluth, Minnesota 55802
Telephone: 218-722-2869

June 10, 1977

Mr. Lloyd McBride, President
United Steelworkers of America
Five Gateway Center
Pittsburgh, Pa. 15222

Dear Brother McBride:

As you know my position in Lead, South Dakota is now vacant. It is imperative that the position in Lead, South Dakota be filled by someone as soon as possible because I am at the present time attempting to give advice to the Local Union officers by visits and telephone and this can only last for so long.

The man I would like to place on the staff in Lead, South Dakota is Gordon Renner, President of USWA Local No. 7044. A resume of his credentials is included.

Kindly let me hear from you on this matter.

Fraternally yours,

/s/ Linus Wampler
LINUS WAMPLER, Director
District No. 33, USWA

LW/sg

Enc.

UNITED STEELWORKERS OF AMERICA
AFL-CIO-CLC

Five Gateway Center, Pittsburgh, Pa. 15222

June 22, 1977

[COPY]

Mr. Linus Wampler, Director
District 33, United Steelworkers of America
609 Providence Building
332 W. Superior Street
Duluth, Minnesota 55802

Dear Sir and Brother:

We have approved your request of June 10, 1977 for the assignment of Gordon Renner as a probationary Staff Representative in District 33, effective July 1, 1977.

In keeping with the policy adopted by the Executive Board, he will serve a probationary period of at least six months, during which time his salary will be $14,824.00 per year, plus C.O.L.A., and a per diem of $90.00 per pay period.

Sincerely yours,

/s/ Lloyd McBride
President

cc: Frank S. McKee, Treasurer
Joseph B. Jeneske, Personnel Administrator

UNITED STEELWORKERS OF AMERICA
Linus E. Wampler, Director
District 33

609 Providence Building
Duluth, Minnesota 55802
Telephone: 218-722-2869

May 8, 1978

Mr. Lloyd McBride, President
United Steelworkers of America
Five Gateway Center
Pittsburgh, Pa. 15222

Dear Brother McBride:

I have your letter of May 3, 1978 in which you have assigned Kenneth Niemczyk, one of my staffmen in St. Paul, Minnesota, to the Organizing Department to work under the direction of Elmer Chatak.

You are aware that I must have a replacement for Brother Niemczyk, at your earliest convenience. I would suggest that Thomas Hoffman President of Local Union 2127, who is at the present time working as a casual organizing, and very successfully, I might add, be appointed as a probationary employee to replace Brother Niemczyk.

With best wishes, I remain

Sincerely and
fraternally yours,

/s/ Linus Wampler
LINUS WAMPLER, Director
District No. 33, USWA

LW/sg

UNITED STEELWORKERS OF AMERICA
AFL-CIO-CLC

Five Gateway Center, Pittsburgh, Pa. 15222

June 20, 1978

Linus Wampler, Director
District 33, United Steelworkers of America
609 Providence Building
332 W. Superior Street
Duluth, Minnesota 55802

Dear Sir and Brother:

We have approved your request of May 8, 1978 for the assignment of Thomas Hoffman as a probationary Staff Representative in District 33, effective July 1, 1978.

In keeping with the policy adopted by the Executive Board, he will serve a probationary period of at least six months, during which time his salary will be $20,704.50 per year, plus COLA, and a per diem of $90.00 per pay period.

Sincerely yours,

/s/ Lloyd McBride
President

cc: Frank S. McKee, Treasurer
Joseph B. Jeneske, Personnel Administrator
Elizabeth O'Leary, Comptroller

UNITED STEELWORKERS OF AMERICA
Linus E. Wampler, Director
District 33

609 Providence Building
Duluth, Minnesota 55802
Telephone: 218-722-2869

July 21, 1978

Mr. Lloyd McBride, President
United Steelworkers of America
Five Gateway Center
Pittsburgh, Pa. 15222

Dear Brother McBride:

On May 4, 1978 I wrote you a letter requesting that Gene Skraba, Vice President of Local Union 6860 be assigned to fill a vacancy caused by retirement on the Staff. I have heard nothing whatever from you regarding this appointment and I would suppose that you have either neglected to appoint the man or have some reasons for not doing so.

Since you failed to appoint Brother Skraba, I hereby submit the name of Gerry Gangl, Vice President of Local #1438, Nashwauk, Minnesota. Brother Gangl is a dedicated trade unionist and a very effective Vice President and he should be a valuable asset to our Staff.

Looking forward to hearing from you in the very near future in regard to the above mentioned matter, I remain

Sincerely and fraternally,

/s/ Linus Wampler
LINUS WAMPLER, Director
District No. 33, USWA

LW/my

USWA DUL

USWA PGH B
2/15/79
TWX 910-561-2527 USWA DUL

ATTN: LINUS WAMPLER, DIRECTOR
DISTRICT 33, USWA

WE HAVE APPROVED YOUR MAY 4, 1978 REQUEST FOR THE ASSIGNMENT OF EUGENE SKRABA AS A PROBATIONARY STAFF REPRESENTATIVE IN DISTRICT 33. EFFECTIVE FEBRUARY 16, 1979, HE IS ASSIGNED TO THIS POSITION.

IN KEEPING WITH THE POLICY ADOPTED BY THE EXECUTIVE BOARD, HE WILL SERVE A PROBATIONARY PERIOD OF AT LEAST SIX MONTHS, DURING WHICH TIME HIS SALARY WILL BE $21,514.50 PER YEAR, PLUS COLA, AND A PER DIEM OF $90.00 PER PAY DAY PERIOD.

BROTHER SKRABA WILL REPORT TO YOUR OFFICE FOR ASSIGNMENT ON FEBRUARY 16, 1979.

LLOYD MCBRIDE, PRESIDENT
UNITED STEELWORKERS OF AMERICA

USWA DUL

UNITED STEELWORKERS OF AMERICA

Linus E. Wampler, Director
District 33

June 22, 1979

Mr. Lloyd McBride, President
United Steelworkers of America
Five Gateway Center
Pittsburgh, Pa. 15222

Dear Brother McBride:

Your overruling of my decision to transfer Eldon Kirsch to Sault Ste. Marie, Michigan has caused a slight problem that I want to discuss with you.

We have always had a full time Staff Representative in the Sault and we need one now. I suggest that I transfer Gordon Renner from Lead, South Dakota to a permanent assignment in the Sault Ste. Marie, Michigan Area and that Dallas Tinnell, President of Local Union #7044, Lead, South Dakota be placed on a permanent assignment to service the Locals that Gordon Renner is now servicing in South Dakota.

If this arrangement is not agreeable with you, I then suggest we place Donald Lohman, President of Local 5440 Cleveland Cliffs Iron Company, Republic, Michigan, or Albert Ball, President of Local 2709 Inland Steel Company, Iron River, Michigan on the permanent assignment to service the Sault Ste. Marie, Michigan Area.

As soon as you make a decision I will move Eldon back to the Minnesota Iron Range as you directed. Looking forward to hearing from you in the very near future regarding the above matter, I remain

Sincerely and
fraternally yours,

/s/ Linus Wampler
LINUS WAMPLER, Director
District No. 33, USWA

LW/my

Phone: (412) 562-2400

UNITED STEELWORKERS OF AMERICA
AFL-CIO-CLC

Five Gateway Center, Pittsburgh, Pa. 15222

July 13, 1979

Linus Wampler, Director
District 33, USWA
609 Providence Building
332 West Superior Street
Duluth, Minnesota 55802

Dear Sir and Brother:

This will acknowledge your request of June 22, 1979 to assign a Staff Representative to service the Sault Ste. Marie, Michigan area. We have approved the assignment of Albert Ball as a probationary Staff Representative in District 33, effective July 16, 1979.

In keeping with the policy adopted by the Executive Board, he will serve a probationary period of at least six months, during which time his salary will be $21,514.50 per year, plus COLA, and a per diem of $90.00 per pay period.

Sincerely yours,

/s/ Lloyd McBride
President

cc: Frank S. McKee, Treasurer
Joseph B. Jeneske, Personnel Administrator
Angie Primerano, Comptroller

bcc: George Becker
Eldon Kirsch

McBRIDE—EXHIBIT B

UNITED STEELWORKERS OF AMERICA

Linus E. Wampler, Director
District 33

609 Providence Building
Duluth, Minnesota 55802
Telephone: 218-722-2869

January 3, 1978

Mr. Lloyd McBride, President
United Steelworkers of America
Five Gateway Center
Pittsburgh, Pa. 15222

Dear Brother McBride:

You will recall that Gordon Renner was appointed as a probationary Staff Representative on July 1, 1977. Gordon has now fulfilled his six months probationary period and is ready for a regular staff job.

I am sure he will do a good job for the organization and be a credit to same. I, therefore, suggest that he be made a permanent staffman effective January 1, 1978 and that he be issued a leased car and any and all other benefits that he may be forthcoming.

Thanks in advance, I remain

Sincerely and
fraternally yours,

/s/ Linus Wampler
LINUS WAMPLER, Director
District No. 33, USWA

LW/sg

Phone: (412) 562-2400

UNITED STEELWORKERS OF AMERICA
AFL-CIO-CLC

Five Gateway Center, Pittsburgh, Pa. 15222

January 10, 1978

Linus Wampler, Director
District 33, United Steelworkers of America
609 Providence Building
Duluth, Minnesota 55802

Dear Sir and Brother:

Your recommendation of January 3, 1978, relative to the status of Staff Representative Gordon Renner, has been approved.

Effective January 1, 1978, he will be considered a permanent employee and his salary adjusted to the $23,005 per year rate, plus C.O.L.A. He will participate in our Staff Insurance and Pension Program and receive a staff rental car.

Sincerely yours,

/s/ Lloyd McBride
President

cc: Frank S. McKee, Treasurer
Joseph B. Jeneske, Personnel Administrator
Elizabeth O'Leary, Comptroller

USWA PGH PA

USWA DUL

DECEMBER 27 1978

MR LLOYD MCBRIDE PRESIDENT

ATTENTION HARRY GUENTHER

STAFF REPRESENTATIVE THOMAS HOFFMAN WILL HAVE COMPLED HIS SIX MONTHS PROBA-TUXXX PROBATIONARY PERIOD AS PX OF DECEMBER 1X 31 1978. HE HAS COMPLETED THIS PERIOD SATISFACTORILY AXXXX AND I RECOMMEND THAT HE BE CLASSIFIED S XXX AS A REGULAR STAFF REPRESENTATIVE EF-FECTIVE JANUARY 1 1979.

LINUS WAMPLER DIRECTOR DIST 33 DULUTH MN

CC TOM HOFFMAN
ENDX

Phone: (412) 562-2400

UNITED STEELWORKERS OF AMERICA
AFL-CIO-CLC

Five Gateway Center, Pittsburgh, Pa. 15222

December 28, 1978

Linus Wampler, Director
District 33, United Steelworkers of America
609 Providence Building
332 W. Superior Street
Duluth, Minnesota 55802

Dear Sir and Brother:

Your recommendation of December 27, 1978 relative to the status of Staff Representative Thomas Hoffman has been approved.

Effective January 1, 1979, he will be considered a permanent employee and his salary adjusted to the $23,905.00 per year rate, plus COLA. He will participate in our Staff Insurance and Pension Program and receive a staff rental car.

Sincerely yours,

/s/ Lloyd McBride
President

cc: Frank S. McKee, Treasurer
Joseph B. Jeneske, Personnel Administrator
Elizabeth O'Leary, Comptroller
Mr. Michael Sam

UNITED STEELWORKERS OF AMERICA

Linus E. Wampler, Director
District 33

August 2, 1979

Mr. Lloyd McBride, President
United Steelworkers of America
Five Gateway Center
Pittsburgh, Pa. 15222

Dear Brother McBride:

Effective August 16, 1979 Brother Eugene Skraba will have completed his six months probationary period.

He has completed this period satisfactorily and I recommend that he be classified as a regular Staff Representative effective August 16, 1979.

Sincerely and
fraternally yours,

/s/ Linus Wampler
LINUS WAMPLER, Director
District No. 33, USWA

LW/sg

Phone: (412) 562-2400

UNITED STEELWORKERS OF AMERICA
AFL-CIO-CLC

Five Gateway Center, Pittsburgh, Pa. 15222

August 9, 1979

Linus Wampler, Director
District 33, USWA
609 Providence Building
332 W. Superior Street
Duluth, Minnesota 55802

Dear Sir and Brother:

Your recommendation of August 2, 1979 relative to the status of Staff Representative Euguene Skraba has been approved.

Effective August 16, 1979, he will be considered a permanent employee and his salary adjusted to the $24,405.00 per year rate, plus COLA. He will participate in our Staff Insurance and Pension Program and receive a staff rental car.

Sincerely yours,

/s/ Lloyd McBride
President

cc: Frank S. McKee, Treasurer
Joseph B. Jeneske, Personnel Administrator
Angie Primerano, Comptroller
Mr. Michael Sam

UNITED STEELWORKERS OF AMERICA

Linus E. Wampler, Director
District 33

January 7, 1980

Mr. Lloyd McBride, President
United Steelworkers of America
Five Gateway Center
Pittsburgh, Pa. 15222

Dear Brother McBride:

Effective January 15, 1980 Brother Albert Ball will have completed his six months probationary period.

He has completed this period satisfactorily and I recommend that he be classified as a regular Staff Representative effective January 15, 1980.

Sincerely and
fraternally yours,

/s/ Linus Wampler
LINUS WAMPLER, Director
District No. 33, USWA

LW/sg

Phone: (412) 562-2400

UNITED STEELWORKERS OF AMERICA
AFL-CIO-CLC

Five Gateway Center, Pittsburgh, Pa. 15222

January 15, 1980

Mr. Linus Wampler, Director
District 33, USWA
609 Providence Building
Duluth, Minnesota 55802

Dear Sir and Brother:

Your recommendation of January 7, 1980, relative to the status of Staff Representative Albert Ball, has been approved.

Effective January 16, 1980, he will be considered a permanent employee and his salary adjusted to the $24,405.00 per year rate, plus COLA. He will participate in our Staff Insurance and Pension Program and receive a staff rental car.

Sincerely yours,

/s/ Lloyd McBride
President

cc: Frank S. McKee, Treasurer
Joseph B. Jeneske, Personnel Administrator
Angeline Primerano, Comptroller
Mr. Michael Sam

McBRIDE—EXHIBIT C

UNITED STEELWORKERS OF AMERICA
Linus E. Wampler, Director
District 33

609 Providence Building
Duluth, Minnesota 55802
Telephone: 218-722-2869

May 4, 1978

Mr. Lloyd McBride, President
United Steelworkers of America
Five Gateway Center
Pittsburgh, Pa. 15222

Dear Brother McBride:

At our meeting on April 27th in your office we agreed that I should have another Staff Representative in Wyoming and we left open the possibility of opening a new office somewhere in the State of Wyoming for the two men to work out of.

In order to get the program started I would suggest that both men work out of Rock Springs to start and I would like to have your authority to appoint James Powell, Vice President of Local Union No. 15320 as a probationary employee to work with Representative Stan Loader in Wyoming.

Sincerely and
fraternally yours,

/s/ Linus Wampler
LINUS WAMPLER, Director
District No. 33, USWA

LW/sg

McBRIDE—EXHIBIT D

UNITED STEELWORKERS OF AMERICA
DISTRICT 31

Room 211 First National Bank Building—219-398-2051
East Chicago, Ind. 46312 Chicago Line: 312-221-5727

June 28, 1978

Mr. Lloyd McBride, President
United Steelworkers of America
Five Gateway Center
Pittsburgh, Pa. 15222

Dear President McBride:

I am submitting the name of Rudolph C. Nichols for appointment to Staff Representative status with the United Steelworkers of America.

Brother Nichols has performed commendably as President of Local 6103, and is exceptionally knowledgeable in the area of the Basic Steel Agreement. For additional information, I am enclosing a copy of his Personal Resume.

I believe Brother Nichols would be a valuable asset to our Staff and trust that you will give favorable consideration to this request.

Sincerely,

JAMES BALANOFF, Director
USWA District No. 31

JB:mdr
Enclosure

Phone: (412) 562-2400

UNITED STEELWORKERS OF AMERICA
AFL-CIO-CLC

Five Gateway Center, Pittsburgh, Pa. 15222

August 14, 1978

James Balanoff, Director
District 31, United Steelworkers of America
First National Bank Building
E. Chicago, Indiana 46312

Dear Sir and Brother:

We have approved your request of June 28, 1978 for the assignment of Rudolph C. Nichols as a probationary Staff Representative in District 31, effective August 16, 1978.

In keeping with the policy adopted by the Executive Board, he will serve a probationary period of at least six months, during which time his salary will be $21,514.50 per year, plus COLA, and a per diem of $90.00 per pay period.

Sincerely yours,

/s/ Lloyd McBride
President

cc: Frank S. McKee, Treasurer
Joseph B. Jeneske, Personnel Administrator
Elizabeth O'Leary, Comptroller

Phone: (412) 562-2400

UNITED STEELWORKERS OF AMERICA
AFL-CIO-CLC

Five Gateway Center, Pittsburgh, Pa. 15222

April 9, 1979

James Balanoff, Director
District 31, USWA
211-216 First National Bank Bldg.
720 West Chicago Avenue
E. Chicago, IN 46312

Dear Sir and Brother:

Rudolph Nichols' probationary period as a Staff Representative in District 31 was up on February 16, 1979.

Therefore, effective February 16, 1979, he will be considered a permanent employee and his salary adjusted to the $23,905.00 per year rate, plus COLA. He will participate in our Staff Insurance and Pension Program and receive a staff rental car.

Sincerely yours,

/s/ Lloyd McBride
President

cc: Frank S. McKee, Treasurer
Joseph B. Jeneske, Personnel Administrator
Angeline Primerano, Comptroller
Mr. Michael Sam

DECLARATION OF LYNN R. WILLIAMS

1. I am International Secretary of the United Steelworkers of America ("USWA"). My previous affidavit in this case is attached to USWA's Motion For Summary Judgment. This Declaration will respond to various allegations and speculation contained in affidavits attached to plaintiff's Motion For Summary Judgment.

2. My sole reason for urging the Convention's adoption of Article V, Section 27 was to prevent candidates from becoming beholden to outsiders, lest this Union someday have officers who do outsiders' bidding rather than serving the interests of USWA's membership. I did not urge adoption of Section 27 to hinder others from running against incumbents, and I did not (and do not) expect that Section 27 will have that effect. USWA is a Union with an enormously active and interested membership, and candidates with real appeal will be able to secure all the contributions they need from the membership.

3. There are implications in plaintiffs' papers that there is something sinister about the manner in which local resolutions urging adoption of a ban against outsider contributions happened to be submitted to the Convention. In fact, the process by which those resolutions were solicited is an integral part of USWA's democratic system.

4. I have recounted in my earlier affidavit the tremendous impact which outsider involvement in USWA's 1977 election had had upon USWA's membership. Our slate had run on a platform which included, as one of its central tenets, that this outsider involvement was dangerous to the Union. We perceived our election—in which every member of the slate won by a substantial margin—as a mandate to address the problem of outsider involvement.

5. Following our election, we solicited the views of persons at all levels of our Union as to how best to address this problem. Many, many people suggested that the solution was to shift from referendum election of national officers to Convention election. These people recognize that the referendum election is more democratic. However, they argued that the danger of outsider involvement would be eliminated by the convention election.

6. While I knew it to be true that every other large union elects its officers at Covention, I believed that it would be very unfortunate if USWA went that route. Few, if any, of the unions which elect officers at Convention have the tradition of hotly-contested elections that USWA has had. Although the law *allows* Convention elections, my personal experience and belief was that referendum elections are preferable: they provide every member an opportunity to participate directly and, for whatever reason, they lead to more contests. As a result, they assure that those who seek union office will remain responsive to the membership.

7. I, and others who shared my desire to retain the referendum election, therefore searched for alternative ways to deal with the outsider problem, and the solution reflected in Article V, Section 27 seemed the most sensible. In order to test whether there was membership support for such a solution, I spoke with Stu Cooke, the Director of my "home" District (District 6), and I have no doubt that the outpouring of resolutions from District 6 resulted from these conversations. It is my assumption that Director Cooke, or someone on his staff, had a form resolution prepared, which was submitted to locals within District 6 for their consideration.

8. No resolution is submitted by a local union to the Convention unless the members of that local union have

voted to submit the resolution. Thus, the resolutions which the Convention received from locals within District 6 reflect that a majority of the members voting at each of those locals supported a constitutional amendment banning outsider contributions.

9. While I was not involved in the process which led to an outpouring of resolutions from within Districts 23 and 37, which, while differently worded, advanced essentially the same substantive result, I assume that the process was similar to that which I have described above with respect to District 6—i.e. that one or more persons who felt strongly that there should be a ban on outsider contributions tendered a form resolution for consideration by those locals, and a majority of the members in each of those locals believed the proposal meritorious and recommended its adoption.

10. The process of seeking local union reaction to programs which the International Officers contemplate is one of the aspects of democracy within USWA. Although the International Executive Board can recommend constitutional amendments to the Convention without having solicited any advance reaction from the rank and file members in the local unions, that is the kind of autocratic approach which traditionally has been avoided in USWA. When the International Officers think an idea has merit, their first interest is to determine whether the membership shares that view. In the case of proposed constitutional amendments, the way to ascertain that is by tendering resolutions to see whether the membership at the local union level will vote to support the proposed amendment.

The response of the local unions in the three districts where resolutions were tendered convinced me, as it obviously did a majority of the members of the International Executive Board, that there was a strong membership desire for a ban on outsider involvement in

USWA elections. This is democracy at work, and plaintiffs' efforts to criticize the process are off the mark.

11. I am advised that the affidavit of James Balanoff submitted on behalf of plaintiffs states that approximately 20 to 25 percent of the delegates to the 1978 USWA Convention were staff employees of USWA. This statement, without amplification, might create the misleading impression that staff employees are delegates responsible only to themselves or to the International Officers who direct their day-to-day work. In fact, no staff employee of USWA is eligible to be a delegate to a USWA Convention by virtue of his position as a staff employee. However, as members of USWA, staff employees are eligible to seek *election* as delegates. A staff employee becomes a delegate only if a local union's membership *elects* him (or her) as a delegate representing that local union and furnishes the employee with a credential certifying his (or her) election. Those staff employees who serve as delegates thus are responsible not to themselves, nor to the International Officers, but *solely* to the local union whom they were elected to represent. In that capacity, staff employees at the Convention frequently oppose, and speak against, the proposals of the International Executive Board and the International Officers, and they have a perfect right to do so. The Manual for Representatives of the United Steelworkers of America—a manual adopted by the International Executive Board which prescribes the rights and duties of staff employees of USWA—provides:

> Representatives as members of the United Steelworkers of America, have the right to attend membership meetings of the Local Union to which they belong, participate in the deliberations and voting at such meetings, attend and participate as delegates to the International Convention and the other policy conferences of the Union if duly elected in accordance with the governing rules, and express any views,

> arguments or opinions that may be pertinent to the business conducted and the policies considered by such bodies. In this fashion each has a major role in the development of the Union's policies.

Over the years, Edward Sadlowski has defended both the right of USWA staff employees to serve as elected delegates to USWA Conventions, and the propriety of their doing so. In remarks to the 1968 USWA Convention, Mr. Sadlowski stated:

> I am going to say some things that's probably unpopular with some of the previous speakers because to some degree I have been known as a rabble rouser or rebel myself. But I will say this, that what Brother Sefton from Canada just said is pretty sound, fellows. I think if a guy pays five bucks into this Union and represents people and he comes to the Convention as a delegate, I think he is placing the welfare and the benefit of the people he represents in their best interest. I don't think a staffman just by virtue of working for the International Union should be deprived of being a delegate to this Convention.

12. I should note further that since Article V, Section 27 was adopted by a margin of approximately 10-1, the participation by staff employee delegates did not affect the outcome of the vote.

13. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Lynn R. Williams
LYNN R. WILLIAMS

Executed on this 27th day of April, 1980.

DECLARATION OF LEON LYNCH

1. I am Vice-President Human Affairs of USWA, one of the five international officers of USWA. I was appointed to the office in 1976, at the time of its creation, by then President I. W. Abel. I ran successfully for election to the office as a member of the McBride slate in the 1977 election.

2. I supported the adoption of Article V, § 27 at USWA's 1978 Convention. I did so because I believe the ban on outsider contributions is vital to USWA's survival, and that without that ban USWA may be taken over by officers who owe their allegiance to outside interests rather than to the membership. I did *not* support the ban because I hoped it would hinder others running against me, or running against my fellow officers, and I do not think the ban will have that effect. USWA has a politically active membership of 1.3 million people, and any candidate with a platform which interests USWA's members will, in my judgment, be able to raise all the money he needs in the form of contributions from USWA members.

4. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Leon Lynch
LEON LYNCH

Executed this 24th day of April, 1980.

DECLARATION OF FRANK S. MCKEE

1. I am the Treasurer of the United Steelworkers of America, one of the five International Officers of the USWA. I was first elected to that position in 1977, having run as a member of the McBride slate.

2. Although I played no active role in securing adoption of Article V, Section 27 at USWA's 1978 Convention, I personally favored its adoption and voted, as a member of the International Executive Board, to recommend its adoption to the Convention. I believed then, and believe now, that if outsiders are allowed to contribute to USWA elections they will eventually buy a leadership of this Union which will do the outsiders' bidding and subvert the best interests of the membership. In favoring adoption of Section 27, I did not expect, nor do I now, that it would hamper others who sought to run against me or against any other incumbent officer of the USWA. My decision to favor Section 27 was not motivated by any such purpose.

3. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Frank S. McKee
FRANK S. MCKEE

Executed on this 24th day of April, 1980.

DECLARATION OF ELDON KIRSCH

Eldon Kirsch declares under penalty of perjury as follows:

1. I have been employed since 1967 by the United Steelworkers of America (hereinafter "USWA") as a Staff Representative in USWA District 33, and I also served during part of that period as a Sub-District Director.

2. I have read the Affidavit of Joseph Samargia filed in this case, which deals with matters involving District 33. In this declaration I wish to correct certain inaccurate and misleading statements contained in the Samargia Affidavit.

3. Mr. Samargia states in paragraph 6 of his Affidavit that in the 1977 election for the position of District Director in District 33, "[t]he staff and employees of District 33 unanimously supported "the candidacy of the then-incumbent Director, Peter J. Benzoni, against the present Director, Linus Wampler. That is not the case. In 1977, there were some 14 staff representatives in District 33. Of these, at least 4 actively supported the candidacy of Linus Wampler: Joe Gustin, Cliff Campbell, Les Dahl and Chester Morris. At least one other staff representative, Silvio Gusfriedi, did not support Peter Benzoni; I am not certain whether he supported Linus Wampler. To the best of my knowledge, at least one other staff representative, Stan Loader, was neutral. Thus, far from having "unanimous" staff support, Peter Benzoni had the support of barely half the staff.

4. Mr. Samargia further states in paragraph 6 of his affidavit that after Linus Wampler became District Director in 1977, USWA's President "refused to appoint anyone recommended by Wampler," but instead desig-

nated new staff representatives "all of whom had opposed Wampler's candidacy." That statement is completely inaccurate. To my knowledge at least four individuals recommended by Director Wampler have been appointed to the staff: Gordon Renner, Tom Hoffman, Eugene Skraba and Albert Ball. Another individual recommended by Director Wampler—Jim Powell—has been assigned to the staff on a casual basis as an organizer, and has been working full-time in that capacity. To my knowledge none of these five individuals "had opposed Wampler's candidacy," and some of them had actively supported him. Indeed, Gordon Renner, who was the first new staff representative appointed after Director Wampler's election, had virtually served as his campaign manager, driving him to campaign appearances throughout the District.

5. Mr. Samargia's description, in paragraph 8 of his affidavit, of the difficulties of mounting a campaign for District Director in District 33 is greatly exaggerated. While it is true that the District encompasses a large geographic area, the membership is not nearly as far-flung as Mr. Samargia suggests.

6. There are approximately 33,000 members in the District. Nearly 13% of that total—4,200 members—are in Local 1938, the local union of which Mr. Samargia is President. Local 1938, which is the largest local in the District, is located in what we refer to as the Iron Range, where the iron ore mining operations, in which USWA has a substantial membership, are concentrated. Some 13,500 members—more than 40% of the District—are located in this area of approximately 60 miles by 10 miles. Another 3,500 are concentrated in Minneapolis-St. Paul, which is a few hours' drive from the Iron Range, and some 1,000 are in White Pine, Michigan, which is likewise a few hours' drive. Somewhat further, but still

less than a day's drive from the Range, are approximately 4,000 members in Marquette, Michigan and 1,000 in Sault Ste. Marie, Michigan. Thus, roughly 70% of the District's membership is readily accessible to Samargia for campaigning purposes. He can feasibly make personal appearances at the locations where the great bulk of the District membership is located, and with only minimal volunteer campaign assistance, he can carry his campaign to virtually the entire membership, without even making use of mailings and other campaign techniques.

7. Equally important, a local union President such as Mr. Samargia has the opportunity to participate in numerous conferences and other activities which bring him into contact with local union officers and members from throughout the District. I list below the more important conferences which have occurred within the last nine months. Mr. Samargia was entitled to attend any and all of these conferences, and he did in fact attend almost all of them, including the month-long negotiating sessions in both Duluth and Pittsburgh.

Conferences Held Since July 1979:

July 24, 1979: Meeting of all District 33 basic steel and iron ore locals regarding apprenticeship program, in St. Paul, Minnesota.

Week of August 26, 1979: District Conference for all District 33 locals, in Jackson, Wyoming.

Week of September 9, 1979: Steelworkers Summer Institute, for all District 33 locals, in Hill City, Minnesota.

September 10, 11, and 12, 1979: Minnesota State AFL-CIO Convention, attended by most locals, in St. Paul, Minnesota.

September 17, 1979: Safety Conference for all Minnesota iron ore local Presidents and Safety Committee Chairmen, in Duluth, Minnesota.

October 1 and 2, 1979: Meeting of all District 33 iron ore and limestone local negotiating committees, in Duluth, Minnesota.

November 26 and 27, 1979: Iron Ore Conference, for all iron ore and limestone local negotiating committees, in Duluth, Minnesota.

December 6 and 7, 1979: Basic Steel Conference for all Presidents of basic steel and iron ore locals (nationwide), in Pittsburgh, Pennsylvania.

December 10 and 11, 1979: Legislative Conference for all Minnesota locals, in St. Paul, Minnesota.

January 21, 22, and 23, 1980: Iron Ore Meeting for all Negotiating Committees of iron ore and limestone locals, in Duluth, Minnesota.

February 15, 1980 through March 13, 1980: Minnesota Ore Negotiations, in Duluth, Minnesota.

March 4 and 5, 1980: "Sound-off Meeting" for all Negotiating Committees of iron ore and limestone locals, in Duluth, Minnesota.

March 17, 1980 through April 15, 1980: Basic Steel and Iron Ore Negotiations (nationwide), in Pittsburgh, Pennsylvania.

8. Thus, any suggestion that the geography of District 33 prevents Mr. Samargia from having effective opportunities to contact officers and members from throughout the District would be inaccurate. Mr. Samargia has had ready access to members from throughout the District, enabling him not only to solicit their votes, but to solicit their active support when they return to their home locals in urging the membership at large to contribute and/or work for his election.

I have read the foregoing Declaration consisting of five typewritten pages, and I declare under penalty of perjury that the statements contained in it are true and correct.

/s/ Eldon Kirsch
ELDON KIRSCH

Executed this 25th day of April, 1980.

DECLARATION OF JOSEPH JENESKE

Joseph Jeneske declares under penalty of perjury as follows:

1. I am Director of the Personnel Department of the United Steelworkers of America (hereinafter "USWA"). On December 20, 1979 I executed an affidavit which has been filed in this case. Among other things, that affidavit describes the contractual right of USWA's employees to be free from reprisal for participating in, or choosing not to participate in, internal union political activities. As stated in the affidavit, that right is enforceable through the grievance-arbitration procedures established in the collective bargaining agreements between USWA and the unions which represent USWA's employees.

2. I have read the allegations contained in paragraph 13 of the Affidavit of Edward Sadlowski, Jr. which has been filed in this case. Mr. Sadlowski there states:

> "Although it is true that USWA staff are represented in collective bargaining by the Staff[man's] Organizing Committee (SOC), staff members who believe they have been victims of political retaliation are reluctant to initiate grievances over such action because the very same staff that overwhelmingly supports the 'official family' in union elections also, in most instances, decides the policies of the SOC."

Those allegations are inaccurate.

3. In the first place, any suggestion that the policies of SOC are somehow dictated by USWA's officers is simply wrong. Mr. Sadlowski forgets, for example, that his own running mate, Andrew Kmec, was for many years the President of SOC. And Mr. Kmec is hardly a unique case; several other SOC officers have been vocal opponents of USWA's International officers. But more important, the fact is that staff members who believe they

have been victims of political retribution are *not* reluctant to initiate grievances. And over the years SOC has pursued several such grievances all the way to arbitration. (In no case, however, has an arbitrator found that the facts supported a charge of reprisal, because in fact there were no reprisals.)

4. I have also read the allegations contained in paragraphs 7 and 8 of the Affidavit of Judith Schneider which has been filed in this case. Attorney Schneider makes a number of highly inaccurate accusations regarding my activities as campaign manager for Sam Evett in the 1973 election for District Director of District 31.

5. In particular, Ms. Schneider is wrong in asserting that I "pressured the staff members in District 31 to support Mr. Evett," that the staff "succumbed to [my] pressure," that staff members contributed to and supported Mr. Evett's candidacy "at [my] insistence," and that I was "entrusted with the task of ensuring that staff members not exercise . . . political freedoms in the 1973 District 31 election." While it is true that Mr. Evett was supported by almost all the District 31 staff in the 1973 election, that support was freely given. I did not threaten staff members with any adverse consequences should they choose not to support Mr. Evett, nor did I "pressure" the staff in any way.

6. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Joseph Jeneske
JOSEPH JENESKE

Executed on this 28th day of April, 1980.

DECLARATION OF HARRY T. GUENTHER

Harry T. Guenther declares under penalty of perjury as follows:

1. Since 1975 I have been an Assistant to the President of the United Steelworkers of America ("USWA"). Prior to my appointment to that position, I was an Assistant to USWA's Secretary-Treasurer. I make this declaration on personal knowledge.

2. I have read the Affidavit of Edward Sadlowski, Jr. which has been filed in this case. In paragraph 5 of that affidavit Mr. Sadlowski states that after his election to the position of District Director in USWA's District 31, USWA President I. W. Abel appointed the defeated candidate for that position, Sam Evett, to be a "Special Assistant to the President." Mr. Sadlowski further states that Mr. Evett was assigned to work out of an office in Chicago, within District 31.

3. The correct title of the position to which Mr. Evett was appointed is International Representative. USWA employs approximately twenty International Representatives, who handle a variety of matters generally under the direct supervision of USWA's President. Mr. Evett's work as an International Representative did not involve matters which would normally be the responsibility of the District Director of District 31 or of the District staff, but rather, like other International Representatives, Mr. Evett was detailed to perform special assignments at the request of the President. In Mr. Evett's case, those assignments included such matters as serving throughout the country on commissions which are established to resolve internal union disciplinary matters and other cases arising under the USWA Constitution. Mr. Evett also handled various legislative matters pursuant to the President's direction. Mr. Evett's responsibilities as Interna-

tional Representative did not entail making recommendations regarding the District 31 staff, or in any way interfering in Mr. Sadlowski's administration of the District, and in fact he did neither.

4. Mr. Evett was assigned to an office in Chicago (although not in the District headquarters) so that he could be near his home, and also because his duties included legislative matters in the Midwest. It is not uncommon for International Representatives to be stationed in the field, where they have lived and worked, rather than in Pittsburgh, particularly where, as here, the Representative's duties do not require his presence in Pittsburgh.

5. Mr. Sadlowski further states in paragraph 5 of his affidavit that following his election as District Director, USWA President I. W. Abel "refused to appoint anyone ([Mr. Sadlowski] recommended," but "made several appointments to the staff of District 31 without [Mr. Sadlowski's] knowledge, approval or recommendation." The fact of the matter is that during the period that Mr. Sadlowski was District Director, no staff representatives whatsoever were appointed in District 31. This resulted from the fact that a survey of staff levels which was undertaken at President Abel's request in districts throughout USWA's jurisdiction revealed that District 31 was greatly overstaffed in relation to the number of members in the District, when compared to the comparable staff levels in other districts. Consequently, it was decided that the appointment of new staff, as requested by Mr. Sadlowski, was not justified.

6. I am advised that in paragraph 28 of Plaintiff's Statement Of Material Facts As To Which There Is No Genuine Dispute, plaintiffs state that "[i]ncluded in the . . . funds which the McBride campaign reported receiving [in connection with the 1977 USWA Presiden-

tial election] were contributions from nonmember lawyers representing the USWA, then AFL-CIO Secretary-Treasurer, Lane Kirkland, officials of the Amalgamated Clothing Workers and ILGWU and former Massachusetts Governor Endicott Peabody." As treasurer for the McBride slate, I have no hesitation in acknowledging that the slate accepted some contributions which would not be permitted under the new provisions of Article V, Section 27 of the USWA Constitution. I would note for the record, however, that in contrast to the Sadlowski campaign, the policy of the McBride slate was to not accept funds from contributors who did not have close ties to the labor movement as well as a sincere interest in the welfare of USWA's membership. Because of this policy, I returned to former Massachusetts Governor Endicott Peabody the contribution he wished to make to the McBride campaign. I would also note that while I accepted personal contributions to the McBride campaign from individual attorneys who had represented USWA, I returned any contributions drawn on a law firm's account (except for one contribution which was received early in the campaign before I had reviewed the matter). Of course, now that Article V, Section 27 has been adopted, contributions from persons who are members of other unions, or who are nonmember lawyers, will not be permissible in future elections, and this prohibition is binding equally upon incumbents and challengers.

7. I have read the foregoing Declaration consisting of four typewritten pages, and I declare under penalty of perjury that the statements contained in it are true and correct.

/s/ Harry T. Guenther
HARRY T. GUENTHER

Executed this 28th day of April, 1980.

DECLARATION OF KITTY MARCY

Kitty Marcy declares under penalty of perjury as follows:

1. I am presently employed as secretary to Michael H. Gottesman and Robert M. Weinberg at the law firm of Bredhoff, Gottesman, Cohen & Weinberg, 1000 Connecticut Avenue, N.W., Washington, D.C. 20036.

2. This morning, Mr. Gottesman received a letter from the counsel to the Campaign Contribution Administrative Committee a copy of which is attached hereto as Exhibit A.

I have read the foregoing and I declare under penalty of perjury that the statements contained therein are true and correct.

/s/ Kitty Marcy
KITTY MARCY

Executed this 29th day of April, 1980.

MARCY EXHIBIT A

LAW OFFICES
HIGHSAW, MAHONEY & FRIEDMAN, P.C.
Suite 210
1050 Seventeenth Street, N.W.
Washington, D.C. 20036

April 28, 1980

Michael H. Gottesman, Esquire
Bredhoff, Gottesman, Cohen & Weinberg
1100 Connecticut Avenue, N.W.
Washington, D.C. 20036

Re: Request of Michael Gottesman and James D. English on Behalf of the United Steel Workers of America, dated April 3, 1980, addressed to the Campaign Contribution Administrative Committee

Dear Mr. Gottesman:

On April 24, 1980, the Committee addressed identical letters to you and to Joseph Rauh, Jr., and to Joseph Yablonski, co-counsel for Edward Sadlowski, Jr., advising that the Committee would give full consideration to the above request at its next executive meeting on the basis of memorandum to be submitted on behalf of the interested parties. In its letter, the Committee directed that the memorandum cover (1) the appropriateness of Committee action on the above request, and (2) whether Article V, Section 27 of the USWA Constitution imposes limitations (a) on the financing of litigation to secure legal rights of candidates, and (b) on the financing of legal services other than litigation.

A copy of your request of April 3, 1980, with a copy of its attached Statement of Position was sent to Messrs.

Rauh and Yablonski and to the Department of Labor by the Committee in its letter of April 7, 1980, requesting comments.

Mr. Yablonski, in his responses of April 11 and April 15, categorically declined to participate in proceedings before the Committee on this subject on the ground, among others, that the questions raised are now pending before the United States District Court for the District of Columbia in *Sadlowski* v. *USWA and F. Ray Marshall, Secretary of Labor*, Civil Action No. 79-2953.

Associate Solicitor Bloch, in her response of April 16, 1980, on behalf of the Department of Labor, declined to comment on your Statement of Position on the ground that it "would be inappropriate" to do so in light of the pendency of the foregoing action.

Your memorandum covering the issues described above should nonetheless be filed with the Committee no later than May 7, as requested by the Committee's letter of April 24. The Committee will consider these questions in its executive session later in the month.

Sincerely,

HIGHSAW, MAHONEY & FRIEDMAN, P.C.

/s/ Edward D. Friedman
EDWARD D. FRIEDMAN
Counsel to the Committee

EDF: sak
cc: B. Bloch
J. Rauh, Jr.
J. Yablonski

DECLARATION OF JOHN J. SHEEHAN

John J. Sheehan declares under penalty of perjury as follows:

1. Since 1965 I have held the position of Legislative Director of the United Steelworkers of America (hereinafter "USWA"). The offices of the Legislative Department are in Washington, D.C.

2. In 1978 John Powderly, who had been an Assistant Education Director for USWA in the Pittsburgh headquarters, transferred to my office as a Legislative Representative. I am advised that in an affidavit filed in this case, Edward Sadlowski, Jr. has charged that John's transfer was an act of "political retribution" resulting from his having supported Mr. Sadlowski in the 1977 election for the USWA Presidency. That allegation is untrue.

3. I have known John Powderly for many years. For reasons having nothing to do with any union political activities, John had been unhappy for several years with his assignment in the Education Department. I was aware of that fact, and I also knew that for personal reasons, again having nothing to do with political activities, John would probably welcome a reassignment. My office was in need of a Legislative Representative, and because of John's background and experience (particularly his writing ability, which is a great asset in my office), as well as the fact that he had previously been a resident of Washington, I advised USWA's officers that I thought John would work out well as a Legislative Representative in my office.

4. On the basis of that advice, and the problems regarding John's assignment in the Education Department (which, as noted above, had nothing to do with political activities and predated the Sadlowski campaign by sev-

eral years), the decision was made that John would transfer to my office as a Legislative Representative. To the best of my knowledge, John was pleased with this transfer. From my discussions with USWA's officers regarding the transfer, I am certain that John's transfer to my office was in no way an act of "political retribution."

I have read the foregoing Declaration consisting of two typewritten pages, and I declare under penalty of perjury that the statements contained in it are true and correct.

/s/ John J. Sheehan
JOHN J. SHEEHAN

Executed this 29th day of April, 1980.

DECLARATION OF EDMUND AYOUB

Edmund Ayoub declares under penalty of perjury as follows:

1. I am presently an Assistant to the President of the United Steelworkers of America (hereinafter "USWA"). From March 1978 to October 1979 I was the Research Director of USWA, following some thirteen years as Assistant Research Director. I am a professional economist, and my work with USWA has been in the discipline of economics. My professional background includes work with such bodies as the Wage Stabilization Board, the Industrial Union Department of the AFL-CIO, the Government of Puerto Rico, and instructional programs conducted by the University of Maryland and Kansas State College. Government-sponsored committees on which I presently serve include the Steel Tripartite Committees on Technology and Capital Formation, and the panel established by the Congressional Office of Technology Assessment to study competition in the steel industry.

2. Oliver Montgomery has been an employee in USWA's Research Department since 1969. I am advised that in an affidavit filed in this suit, Edward Sadlowski, Jr. has alleged that Mr. Montgomery, who was Mr. Sadlowski's running mate in the 1977 USWA International election, has, as an act of "political retribution," "been removed from participation in certain negotiations in which he had previously been involved." That charge is untrue.

3. From time to time employees in the Research Department have provided technical assistance in connection with certain contract negotiations. To the best of my knowledge, the only such negotiations in which Mr. Montgomery has ever been involved have been certain triennial negotiations with Asarco, Inc., which are a part of USWA's industry-wide bargaining in the lead-zinc

and nonferrous fabricating industries. As I recall, Mr. Montgomery provided technical assistance in connection with those negotiations in 1974; and he did so again in 1977, *after* the election which is alleged to have resulted in his "political retribution."

4. As preparations were being made for USWA's 1980 round of collective bargaining, I was directed by Frank McKee, USWA's Treasurer, to take steps to reduce the expenses connected with the negotiations, and in particular, to reduce the number of Research Department personnel involved. This directive led to major changes in the conduct of our negotiations. For example, to save costs the 1980 basic steel industry negotiations were confined to Pittsburgh, in contrast to past years when much of the staff was sent to Washington to work on the negotiations. For the same reason, while in the past as many as seven Research Department personnel had been assigned to the nonferrous negotiations, I decided that only three Research Department personnel will be involved this year. (They will be assisted by at least one employee from the other unions which participate with USWA in the negotiations.) These three individuals are myself, Edward Ghearing, and Paul Kennedy. Because of the decision to utilize only three individuals to perform research functions in these negotiations, three Research Department employees who previously participated in the negotiations have been notified that they will not participate in 1980. These three employees are Oliver Montgomery, Steve Newman, and Jerry Sokolow.

5. The decision as to who will participate in the negotiations was in no way based on the political views of the employees in question. Mr. Ghearing was selected because he is the Assistant Research Director. Mr. Kennedy was selected because at the time the selection was made, he worked in a higher-rated position than Messrs. Montgomery, Newman and Sokolow. Although I of course know that Mr. Montgomery was Mr. Sadlowski's running

mate, I do not know the political views (if any) of Messrs. Newman and Sokolow, and I can state unequivocally that no "political retribution" was involved in my determination as to who will be involved in the negotiations.

6. The negotiations in which Mr. Montgomery formerly participated are not the only negotiations for which the need to cut costs has led to a reduction in the utilization of Research Department personnel. In the aluminum industry negotiations as well, some personnel who participated in 1977 will not participate in 1980. That decision, of course, in no way involved Mr. Montgomery.

I have read the foregoing Declaration consisting of four typewritten pages, and I declare under penalty of perjury that the statements contained in it are true and correct.

/s/ Edmund Ayoub
EDMUND AYOUB

Executed this 25th day of April, 1980.

PLAINTIFFS' REPLY TO DEFENDANT'S STATEMENT OF GENUINE ISSUES

Pursuant to Rule 56 and Local Rule 1-9(h), Defendant United Steelworkers of America has filed its Response to Plaintiffs' Statement of Material Facts as to which there is No Genuine Dispute. Plaintiffs review herein seriatim the facts recited in their "Statement" and USWA's Response to each paragraph in order to assist the Court in determining whether any genuine factual disputes do exist. On examination of the facts contained in each paragraph and the responses thereto, it becomes clear that there are no genuinely disputed material facts which would prevent the entry of summary judgment on behalf of the Plaintiffs.

Defendant's responses fall into several categories:

(a) Facts which are admitted without qualification;*

(b) Facts which Defendant Admits, but disputes their materiality;**

(c) Facts which are admitted, but differ from Plaintiffs' recitation insubstantially or semantically;***

(d) Facts which Defendant denies, which its Affidavits or Declarations support or which it denies without proper basis;****

(e) Facts on which Defendant claims to require discovery before admitting or denying.*****

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* ¶¶ 2, 3, 4, 6, 7, 10, 11, 12, 13, 37 and 43.

** ¶¶ 8, 9, 18, 26, 36, 41, 42, 45 and 46.

*** ¶¶ 1, 14, 15, 16, 17, 21, 22, 23, 24, 29 (in part), 31, 32, 35 (in part), 48, 49.

**** ¶¶ 27, 28, 29, 33, 38, 39 and 50.

In considering whether a genuine factual dispute exists, it is now settled that the burden shifts to the party opposing summary judgment—in this case Defendant USWA—to "set forth specific facts showing that there is a genuine issue for trial." Rule 56(e), F.R.C.P.; *First National Bank of Arizona* v. *Cities Service Co.*, 391 U.S. 253, 289 (1968). As described in detail hereinafter, there is no dispute as to the controlling material facts.

There are, however, two areas of Defendant's response that require some legal analysis in advance of reviewing the specific facts. Specifically, there are instances where Defendant has made a general denial without any basis therefor. Similarly, the Defendant's assertion that it requires discovery as to certain matters cannot be accepted because it has control over the documents and/or witnesses which would be the subject of such discovery. Additionally, such an assertion has a very hollow ring when considered in light of the massive filings USWA has made herein and the affiants and declarants which are obviously at its disposal. Lastly, the Affidavit of counsel does not comply with Rule 56(f) which requires a *party* opposing the motion to set forth the reasons he cannot respond.

Illustrative of Defendant's general denials is its refusal to respond to Paragraphs 27 and 28 of the Statement, which recites in detail the sources of campaign funds generated and expended by USWA's "official family" during the most recent International election:

> "27. A comparison of the list of contributors to McBride's campaign (Exhibit B, Requests for Admissions) with the list of officers and employees contained on the USWA's then most recent financial report filed with the Department of Labor revealed:

***** ¶¶ 27, 28, 29, 33, 38, 39 and 50.

a. Approximately 90% of the contributions the McBride campaign admitted receiving came from the officers and staff of the USWA.

b. Approximately one-third of the USWA's officers and staff contributed to McBride's campaign.

c. By far, the largest amounts received by McBride came from USWA officers and staff.

d. Most of the USWA's District Directors contributed at least $1,000 to the McBride campaign.

e. The staff members who made "contributions" ordinarily paid $500 each.

f. In some USWA Districts, every single staff member contributed an identical amount.

g. Sometimes the payments to the McBride campaign by staff were made in "installments". (Hauptman Affidavit, ¶¶ 5, 6; Exhibit B, Requests for Admissions; Sadlowski Affidavit, ¶ 8).

28. Included in the remaining 10% of the funds which the McBride campaign reported receiving were contributions from nonmember lawyers representing the USWA, then AFL-CIO Secretary-Treasurer, Lane Kirkland, officials of the Amalgamated Clothing Workers and ILGWU and former Massachusetts Governor Endicott Peabody. (Summers Affidavit, ¶ 15; Hauptman Affidavit, Attachment A; Sadlowski Affidavit, ¶ 11)."

Although Defendant has presented Declarations of USWA President McBride, the Treasurer of the McBride campaign committee in 1977, Harry T. Guenther (See Guenther Affidavit, ¶ 6) and Declarations from all of McBride's running mates, USWA states in its response that it has not undertaken an item-by-item analysis of

McBride's campaign receipts, that it is "not inclined to assume that burden" and that it cannot "verify" that whether 10% of McBride's contributions came from persons other than USWA staff—e.g., rank and file members and outsiders.[1] These facts lie at the heart of this case, and Defendant knows it. Having admitted the authenticity of the list of McBride's contributors, USWA knows full well that Plaintiffs' factual statement regarding the sources and amounts of payments McBride's campaign received is true and accurate and, indeed, irrefutable. Moreover, USWA knows that such an admission thoroughly undercuts its claim that fund raising can be successfully conducted in International elections among rank and file members. Given Defendant's resources and access to documents and individuals which could supply the existence of information which genuinely disputes the facts contained in Plaintiffs' Statement, its failure to carry its burden of demonstrating factual conflict cannot be justified or excused.

Similarly, Defendant's claim to need discovery in order to respond to certain factual statements cannot be accepted. Unlike situations where the party opposing summary judgment argues that the facts are within the exclusive knowledge of the moving party, here, USWA has the ready if not exclusive, access to potential affiants and the relevant documents.[2] A party opposing

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[1] Defendant USWA similarly declined to respond to Plaintiffs' statement (Para. 20) regarding the sources of campaign funds received by "official family" candidate Evett when he was challanged by Sadlowski despite the fact that it has submitted an affidavit and a declaration from Joseph Jeneske, Evett's campaign manager and a declaration from USWA General Counsel Kleiman, a principal Evett supporter.

[2] Typical of Defendants claim to need discovery, is its assertion that it cannot respond to Sadlowski's statements regarding the sources of his campaign funds (¶ 30). Though ordinarily this might be true in the context of a previously held union election, it is not true here. USWA admits that the issue of Sadlowski's

summary judgment on Rule 56(f) grounds, *i.e.*, that he cannot submit counter-affidavits or that discovery is required, must state what facts he would expect to show through discovery, what steps he has taken to obtain access and "why these facts cannot yet be presented." *Beckers* v. *International Snowmobile Industry Assn.*, 581 F.2d 1308, 1311 (C.A. 8, 1978); citing 10 Wright & Miller, Federal Practice & Procedure § 2740 at pp. 722-23. Defendant USWA simply has not made such a showing.

Plaintiffs' Statement of Fact:

1. Plaintiff Edward Sadlowski, Jr., is a citizen of the State of Illinois. He is a member in good standing of the USWA, and was a candidate for the office of International President of the USWA in the Union's most recent International election held in February, 1977. According to the tally announced by the USWA, Sadlowski was defeated by the incumbent USWA President Lloyd McBride. (Complaint & Answer, ¶ 2; Sadlowski Affidavit, ¶¶ 1, 2).*

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fund raising was "a principal issue" during the 1976-77 election campaign (¶ 32 and response) and that both candidates exchanged lists of contributions as a result of litigation between two campaigns (¶ 26 and response). Thus, McBride, his running mates, his campaign manager, and his advisors—including Mr. Kleiman—all, had access to the list of Sadlowski's contributors. All of these individuals are presently employed by the USWA, are subject to its direction, and all have filed affidavits or declarations on behalf of USWA in this case. For USWA to contend under these circumstances that it needs discovery on this issue is absured and should be recognized as nothing more than a bad faith effort to ward off the entry of summary judgment against it.

* References to "Sadlowski Affidavit" are to the affidavit submitted by lead-plaintiff Edward Sadlowski, Jr. References to the affidavit submitted by his father, will be designated "Sadlowski, Sr. Affidavit".

Defendant's Response:

1. Lloyd McBride was not the "incumbent USWA President" when he defeated Sadlowski (Williams Affidavit, ¶ 9). USWA's determination that McBride defeated Sadlowski was correct, and was confirmed by the Secretary of Labor (Jeneske Affidavit, ¶ 6). Otherwise, this paragraph is admitted.

Plaintiffs' Reply:

Plaintiff agrees that McBride was not the "incumbent" USWA President. With this correction, the balance of the entire paragraph is undisputed.

Plaintiffs' Statement of Fact:

2. Plaintiff Joseph Samargia is a citizen of the State of Minnesota. He is also a member in good standing of the USWA. (Complaint & Answer, ¶ 3). He is president of the largest USWA Local Union in USWA District 33 and in 1981 he may be a candidate for the position of District Director in USWA District 33. (Samargia Affidavit, ¶¶ 2, 3, 4, 8, 9).

Defendant's Response:

2. Admitted. Any USWA member "may be" a candidate for any union office for which he or she is eligible.

Plaintiffs' Statement of Fact:

3. Plaintiff Edward Sadlowski, Sr., is a citizen of the State of Illinois. He was a member of the USWA for 32 years until his retirement in 1969. (Complaint & Answer, ¶ 4). As a nonmember of the USWA, he actively supported his son's candidacy for District Director in 1973 and 1974 and for President in 1976 and 1977. (Sadlowski, Sr. Affidavit, ¶¶ 1-5).

Defendant's Response:

3. Admitted.

Plaintiffs' Statement of Fact:

4. Plaintiff Leonard S. Rubenstein was a citizen of the District of Columbia when this action was filed. He is not a member of the USWA, but in 1976 he made contributions to support the candidacy of Plaintiff Sadlowski, Jr. for USWA President. (Complaint & Answer, ¶ 5; Rubenstein Affidavit, ¶ 4).

Defendant's Response:

4. Admitted.

Plaintiffs' Statement of Fact:

5. Plaintiff James Miller is a citizen of the Commonwealth of Massachusetts. He is a member of the Bar of the Commonwealth of Massachusetts. He is not a member of USWA, but in 1976 and 1977 he performed legal services during the USWA election in an effort to assure a fair election. (Complaint & Answer, ¶ 6; Sadlowski Affidavit, ¶ 2).

Defendant's Response:

5. Denied that the services which plaintiff Miller performed in 1976 and 1977 were "legal services" or "an effort to assure a fair election" (Kleiman Declaration, ¶ 11). Otherwise, this paragraph is admitted.

Plaintiffs' Reply:

Because of other admissions made by Defendant USWA regarding nonmember Plaintiffs' Sadlowski, Sr. (¶ 3) and Rubenstein (¶ 4) and their standing (¶ 46), the disputed portion of this paragraph is no longer material to disposition of Plaintiffs' Motion for Summary Judgment.

Plaintiffs' Statement of Facts:

6. Defendant, United Steelworkers of America, AFL-CIO-CLC, is an unincorporated labor organization within the meaning of Section 2(5) of the National Labor Relations Act, as amended, 29 U.S.C. 152(5) and Sections 3(i) and 401(a) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. §§ 402(i), 481 (a)). The USWA maintains offices in the District of Columbia at 815 Sixteenth Street, NW, Washington, D.C. (Complaint & Answer, ¶ 7).

Defendant's Response:

6. Admitted.

Plaintiffs' Statements of Facts:

7. Defendant F. Ray Marshall is the Secretary of Labor of the United States. He maintains his offices at 200 Constitution Avenue, NW, Washington, D.C. The Secretary of Labor is entrusted with certain responsibilities with respect to the administration and enforcement of the Labor-Management Reporting and Disclosure Act, including Title IV of the Act (Complaint & Answer, ¶ 8).

Defendant's Response:

7. Admitted.

Plaintiffs' Statement of Facts:

8. The USWA was formed initially as the Steel Workers Organizing Committee in 1936 shortly after Congress enacted the National Labor Relations Act in 1935. (Complaint & Answer, ¶ 9).

Defendant's Response:

8. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In

the event the Court deems these matters to be material, USWA responds as follows. Admitted.

Plaintiffs' Reply:

The Court will determine the materiality of the facts admitted in this paragraph.

Plaintiffs' Statement of Facts:

9. The USWA enjoys tax-exempt status by virtue of Section 501(c)(5) of the Internal Revenue Code. (Complaint & Answer, ¶ 10).

Defendant's Response:

9. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. Admitted.

Plaintiffs' Reply:

The Court will determine the materiality of the facts admitted in this paragraph.

Plaintiffs' Statement of Fact:

10. By operation of the National Labor Relations Act, the USWA has been recognized at some plants, and at others has been certified by the NLRB, as the exclusive collective bargaining agent for all employees within bargaining units at these plants; at some, but not at all plants, it has executed agreements which make membership in the USWA and/or payments of dues to USWA a condition of employment by employees of such employers whether the employees want to make such payments or not. Title IV of LMRDA prescribes certain standards for the election of union officers, including a requirement that elections are required to be conducted in accordance with the union's constitution and by-laws

insofar as those documents are not inconsistent with the standards contained in Title IV. (Complaint & Answer, ¶ 11).

Defendant's Response:

10. Admitted.

Plaintiffs' Statement of Fact:

11. The USWA Constitution is regarded at law as a contract between the USWA and its members. A true copy of the current USWA Constitution is appended to the Complaint as Exhibit A. Members of the USWA can be fined, disciplined or expelled from membership for violation of the USWA's constitutional provisions. (Complaint & Answer, ¶ 12).

Defendant's Response:

11. Admitted.

Plaintiffs' Statement of Fact:

12. International officers of the USWA are elected in referendum elections conducted among the Union's membership every four years. At present there are nearly 1.3 million members of the USWA located in virtually every state, the District of Columbia, and throughout virtually all the provinces of Canada. The next election is scheduled to be held on May 28, 1981. (Complaint & Answer, ¶ 13).

Defendant's Response:

12. Admitted.

Plaintiffs' Statement of Fact:

13. District Directors in USWA's twenty-five districts are also elected every four years by referendum vote of members within their respective districts. The

next election is schduled to be held on May 28, 1981. (Complaint & Answer, ¶ 14).

Defendant's Response:

13. Admitted.

Plaintiffs' Statement of Fact:

14. The incumbent officers and District Directors of the USWA have been described by former USWA President I. W. Abel, as the "Official Family". (Plaintiffs' Requests for Admissions & Responses, ¶ 1 and Exhibit A).

Defendant's Response:

14. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, the paragraph is denied. As the document cited in this paragraph reflects, former USWA President I.W. Abel used the phrase "official family" (without capital letters) in its usual generic sense, as referring to the elected officers of USWA. (See also Kleiman Declaration, ¶ 6).

Plaintiffs' Reply:

For purposes of Plaintiffs' Motion for Summary Judgment, Plaintiff will accept Defendants' characterization of Abel's testimony, that is, that he "used the phrase 'official family' (without capital letters) in its usual generic sense as referring to the elected officers of USWA."

Plaintiffs' Statement of Fact:

15. In the 1973 election, all of the members of the "Official Family" endorsed and supported candidates Abel, Walter Burke and John Johns for USWA's top three offices. Members of the "official family" made fi-

nancial contributions to a campaign fund known as the Steelworkers for Continued Leadership and a portion of those funds were provided to Sam Evett who was a candidate for the position of District Director of District 31. Evett was opposed in that election by Plaintiff Edward Sadlowski, Jr. (Complaint & Answer, ¶ 16; Requests for Admissions & Responses, ¶ 2; Sadlowski Affidavit, ¶ 3).

Defendant's Response:

15. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. The facts, insofar as USWA knows them, are as stated in Par. 2 of USWA's Response to "Request for Admissions Addressed to Defendant United Steelworkers of America":

> Admitted that in the 1973 election I.W. Abel, Walter Burke, and John Johns (who were the Union's International Officers) "selected, endorsed and supported" themselves for re-election. Denied that the Union's District Directors either as a "group" or individually, "selected" Abel, Burke and/or Johns for USWA's top three offices. Admitted that persons who were incumbent District Directors individually "endorsed" and/or "supported" the re-elected of Abel, Burke, and Johns, who were unopposed; but denied that the District Directors as a "group" endorsed or supported Abel, Burke and Johns. Denied that the persons who were incumbent officers or District Directors of USWA "supported" Sam Evett for the position of District Director of District 31 in the 1973 election, either individually or as a group, except admitted that District Director Joseph Germano actively supported Evett, and that most of the individuals who were officers and District Directors (as well as others) made contribu-

tions to Steelworkers for Continued Leadership without designating the contests or candidates to be supported by such contributions and a small portion of the contributions received were expended by the Treasurer of Steelworkers for Continued Leadership on behalf of Evett's candidacy. Admitted that Evett was opposed in that election by Plaintiff Edward Sadlowski, Jr.

USWA cannot respond further without discovery.

Plaintiffs' Reply:

The differences between Paragraph 15 of Plaintiffs' Statement and Defendant's response to Paragraph 2 of the Request for Admissions are largely semantic. For purposes of the Plaintiffs' Motion, the recitation by USWA is sufficient in light of the following admissions:

(1) That all of the persons who were incumbents in 1973 supported Abel, Burke and Johns "individually";

(2) That incumbent District 31 Director Germano supported Evett and that "most of the Officers and District Directors made contributions" some of which were expended on behalf of Evett's candidacy.

Having accepted, for present purposes, USWA's language, there is no need for any further discovery regarding these facts.

Plaintiffs' Statement of Fact:

16. At the time of the 1973 election, Sadlowski was a member of the USWA Staff in District 31. At that time, there were approximately 60 members of the staff assigned to District 31; of this number, only one member of the staff supported his candidacy. The balance of the staff in District 31 actively supported the election campaign of Sam Evett. Sadlowski Affidavit, ¶ 3). Evett's

campaign manager was Joseph Jeneske, who raised money for Evett's campaign from the staff and otherwise insured that the staff supported Evett. (Schneider Affidavit, ¶ 7).

Defendant's Response:

16. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. Admitted that in 1973 Sadlowski was a member of the USWA Staff in District 31, and that at that time there were approximately 60 members of the staff assigned to District 31. USWA lacks knowledge, and without discovery is unable to respond, as to the number of staff employees supporting Sadlowski, but admits that almost all of the staff employees supported Evett (Jeneske Declaration, ¶ 5) Admitted that Evett's campaign manager was Joseph Jeneske. The last sentence of this paragraph is denied: Jeneske did not in any way pressure staff employees to support Evett or "insure" that they did so (Jeneske Declaration, ¶¶ 4-5).

Plaintiffs' Reply:

For purposes of the present Motion, USWA's admissions that there were approximately 60 members of the staff at the time of the 1973 election, that almost all of them supported Evett and that Evett's campaign manager was Joseph Jeneske are sufficient.

Plaintiffs' Statement of Fact:

17. Despite charges of vote fraud by Plaintiff Edward Sadlowski, Jr., the USWA installed Evett as the Director of District 31. Sadlowski retained the services of undersigned counsel, Joseph L. Rauh, Jr., to handle his complaint with the Secretary of Labor under Title IV of LMRDA. (Sadlowski Affidavit, ¶ 21; Benson Affidavit, ¶ 22).

Defendants' Response:

17. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. First sentence is not supported by either of the sources cited for it: Sadlowski's affidavit does not contain a Par. 21, and Benson's affidavit is hearsay. However, it is admitted that Sadlowski filed an internal union challenge to Evett's election, and that USWA determined Evett to be properly elected. Second sentence denied: Rauh's services were retained to gather information for use in Sadlowski's election campaign, not to "handle his complaint with the Secretary of Labor under Title IV of LMRDA"; and a federal Magistrate has so found (Kleiman Declaration, ¶ 12).

Plaintiffs' Reply:

USWA's admission that Sadlowski filed an internal challenge and that Evett was found by the union to have been properly elected is sufficient for present purposes, if coupled with the Court taking judicial notice of both the Third Circuit decision, *Brennan* v. *United Steelworkers of America*, 554 F.2d 586 (1977) and the Magistrate's report appended to the Kleiman Declaration. (Federal Rules of Evidence, Rule 201).

Plaintiffs' Statement of Fact:

18. Ultimately, the Secretary of Labor instituted an action to void Evett's election. Plaintiff Sadlowski, Jr., through attorney Rauh, intervened. Thereafter, a consent order was entered and a rerun election was held. Plaintiff Sadlowski, Jr. won by a vote of 39,637 to 20,158 and was installed as District 31 Director. (Complaint & Answer, ¶ 18; Sadlowski Affidavit, ¶¶ 4-5; Benson Affidavit, ¶ 22).

Defendant's Response:

18. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. Admitted.

Plaintiffs' Reply:

The Court will determine the materiality of the facts admitted in this paragraph.

Plaintiffs' Statement of Fact:

19. Attorney Rauh and the Association for Union Democracy monitored compliance by Defendant USWA with the consent order. (Sadlowski Affidavit, ¶ 2; Benson Affidavit, ¶ 3).

Defendant's Response:

19. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. Denied: Rauh and AUD functioned solely to secure every tactical advantage they could to enhance Sadlowski's chances of success in the election; they were not monitoring compliance by USWA with the consent order (Kleiman Declaration, ¶ 13).

Plaintiffs' Reply:

In light of the facts which have been admitted or are subject to judicial notice as set forth in paragraphs 17 and 18, it is not necessary for purposse of passing upon Plaintiffs' Motion for the Court to consider whether the facts set forth herein are genuinely disputed.

Plaintiffs' Statement of Fact:

20. During the rerun election, Sadlowski's campaign expended approximately $25,000 to $30,000. His cam-

paign funds were raised from among members of the USWA as well as through contributions made to him by friends, family, acquaintances and supporters who were not members of the Steelworkers. Evett made very little effort to raise campaign money among the rank and file members of the USWA. Evett's campaign was financed almost entirely by "contributions" from the highest officials in the USWA including President I.W. Abel and virtually all of the District Directors, as well as contributions from USWA staff throughout the United States who were urged to contribute. Sadlowski was unable to come close to matching the large sums obtained by Evett from USWA staff and officers. (Sadlowski Affidavit, ¶ 4).

Defendant's Response:

20. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. USWA does not have sufficient knowledge to respond to the matters recited in this paragraph, and no way of securing such knowledge without discovery. Insofar as this paragraph purports to state facts respecting the efforts of Evett and the sources and amounts of his campaign financing, it is supported solely by an affidavit which is, on these points, hearsay.

Plaintiffs' Reply:

USWA's claim of inability to respond and its hearsay objections are lacking in merit and should be rejected:

(a) USWA does not require discovery. It has submitted affidavits or declarations from its General Counsel who purports to be intimately familiar with Sadlowski's election campaigns and campaign financing (Kleiman Declaration, ¶ 8), and from Evett's campaign manager (Schneider Affidavit, ¶ 7; Jeneske Declaration, ¶ 4, 5). Plainly, USWA

has access to this information without the need to take discovery;

(b) Sadlowski's affidavit recitations regarding his election opponent's fund raising activities are based upon his personal observations and are not hearsay. (Notably, Defendant USWA's General Counsel makes recitations regarding Sadlowski's fund raising efforts based solely on the fact that Kleiman is a Chicago area resident).

Plaintiffs' Statement of Fact:

21. Like most union insurgents, Sadlowski did not have sufficient funds to pay counsel at his regular hourly rate for services rendered. Instead, attorney Rauh has sought payment of his fees by the USWA which has been consistently resisted since 1975 by the USWA and since early 1978 by Defendant Marshall as well. In rendering legal services for Sadlowski, attorney Rauh utilized his office, office supplies and office staff. Sadlowski Affidavit, ¶ 2; Summers Affidavit, ¶ 16).

Defendant's Response:

21. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. With respect to the first sentence of this paragraph, Sadlowski's capacity to pay is a matter as to which USWA cannot respond without discovery, except to note that Sadlowski was a highly-paid staff employee of USWA. With respect to the second sentence, admitted that Rauh has sought fees from USWA, and that USWA has resisted them on the legitimate ground (which a federal Magistrate has sustained) that Rauh performed no service conferring a benefit upon the members of USWA (Kleiman Declaration, ¶ 14). Third sentence admitted, except that many

of Rauh's services for Sadlowski was not "legal services" (*Id.* ¶¶ 13-15).

Plaintiffs' Reply:

For purposes of the present Motion, the admission that Attorney Rauh utilized his office, office staff and supplies while rendering some legal services to Sadlowski is sufficient. The Court has been requested to take judicial notice of the proceedings regarding USWA's resistance to Attorney Rauh's fee application. (See para. 17, *supra.*).

Plaintiffs' Statement of Fact:

22. Sadlowski was installed as District Director in late 1974. District 31 is the largest District within the United Steelworkers of America. USWA President and titular head of the "official family," I.W. Abel, immediately appointed defeated candidate Sam Evett to a newly-created position as Special Assistant to the President. A new office was set up for Evett within District 31 in Chicago. Following Sadlowski's election, he suggested to Abel the names of several individuals to fill vacancies on the staff of District 31. While District Directors in the USWA normally have the effective power to appoint staff in their Districts through recommendations to the USWA President, Abel refused to appoint anyone Sadlowski recommended. Rather, Abel made several appointments to the staff of District 31 without Sadlowski's knowledge, approval or recommendation. In each instance, the individuals Abel appointed had opposed Sadlowski's candidacy. (Sadlowski Affidavit, ¶ 5).

Defendants's Response:

22. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows First two sentences admitted. Remainder of paragraph disputed in its entirety: Evett

was apointed an International Representative to perform functions nationwide which were wholly unrelated to the duties of the District Director and staff of District 31; Evett did not suggest appointments to the District 31 staff; Abel did not make *any* appointments to the District 31 staff; on the contrary, a study of USWA staffing generally disclosed that District 31 was overstaffed so that no appointments were made (Guenther Declaration, ¶¶ 2-5).

Plaintiffs' Reply:

The Court will determine which facts are material.

Based upon the foregoing, Defendant has explicitly admitted:

(1) The first two sentences of the paragraph:

"Sadlowski was installed as District Director in late 1974. District 31 is the largest District within the United Steelworkers of America."

(2) That Evett was, following his defeat, appointed to the position of International Representative by Abel;

(3) That Abel made no appointments to the staff in District 31 during Sadlowski's term;

Defendant USWA has failed to respond and therefore is deemed to admit the following factual matters:

(1) That a new office was set up by Abel for Evett in Chicago, following Evett's defeat. In fact that Declaration of Harry T. Guenther supports this statement. (¶¶ 2, 3, 4)

(2) That Sadlowski made recommendations for staff appointments;

(3) That District Directors normally have the effective power to appoint staff in their Districts through recommendations to the USWA President.

Defendant denies that Evett made any recommendation of persons for staff appointments but Plaintiffs never asserted that he did.

Plaintiffs' Statement of Fact:

23. In 1976, Plaintiff Sadlowski, Jr. announced his candidacy for the Presidency of the USWA. He led a slate of candidates which challenged a slate headed by Lloyd McBride. The McBride slate was supported by USWA's three top International officers at the time, Abel, Burke and Johns, and nearly all of the twenty-five incumbent USWA District Directors. (Complaint & Answer, ¶ 20; Requests for Admissions and Responses, ¶ 4).

Defendant's Response:

23. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. First two sentences admitted. With respect to the third sentence, the facts insofar as USWA knows them, are as stated in Par. 4 of USWA's Response to "Request for Admissions Addressed to Defendant United Steelworkers of America":

> . . . Denied that the International Officers and/or District Directors as a group endorsed, supported or campaigned for the McBride slate. Persons who hold International Office in USWA, and persons who are District Directors, enjoy the same right as any other member of USWA to endorse, support, and campaign for the candidates of their choice in USWA elections, and frequently exercise that right. During the 1977 election, Abel, Burke, Johns, and many of the other persons who were incumbent District Directors, individually endorsed the McBride slate (although many had initially opposed this slate and favored others who chose ultimately not to run). At least

two District Directors (Sadlowski and Joseph Kender) endorsed the Sadlowski slate, and it is possible that others—whose choice was not known to USWA —did so as well. A few District Directors (a minority) actively campaigned for the McBride slate; Sadlowski, Kender, and perhaps others actively campaigned for the Sadlowski slate.

USWA cannot respond further without discovery.

Plaintiffs' Reply:

The Court will determine which of the admitted facts are material.

The differences between Plaintiffs' factual statement and Defendant's response to paragraph 4 of the Requests for Admissions are purely semantic. Plaintiffs, for purposes of the present motion, accept the recitation of the USWA set forth above.

USWA claims to need further discovery on whether anyone other than Kender supported the Sadlowski slate is ludicrous in light of its exclusive access to the district directors, the array of affidavits and declarations it has already filed, and its unique access to its omniscient General Counsel.

Plaintiffs' Statement of Fact:

24. Defendant USWA has knowledge of only one incumbent District Director (other than Sadlowski himself) who supported the Sadlowski slate in the 1977 election. (Requests for Admissions & Responses, ¶ 4).

Defendant's Response:

24. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. Admitted, but as noted above this does not mean that there were not other in-

cumbent District Directors supporting the Sadlowski slate. USWA cannot find that out without discovery.

Plaintiffs' Reply:

The Court will determine which of the admitted facts are material.

No further discovery is required. (See Reply to ¶ 23).

Plaintiffs Statement of Fact:

25. During Sadlowski's campaign for the USWA Presidency, three of his running mates, Marvin Weinstock, Andy Kmec and Oliver Montgomery, were members of the USWA staff. (USWA Statement of Facts, ¶ 18). The Sadlowski slate, however, received less than $5,000 in contributions from among the USWA's appointed staff and employees. (Sadlowski Affidavit, ¶ 9). No more than 3 percent of the nearly 1500 employees and staff of the USWA supported the Sadlowski slate candidacies. In several districts, the staff unanimously opposed the Sadlowski slate. (Sadlowski Affidavit, ¶ 7; Exhibit B, Plaintiffs' Requests for Admissions).

Defendant's Response:

25. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. First sentence admitted. As to the second and third sentences, there is no way that USWA could acquire knowledge except through discovery. The fourth sentence is a characterization of a document—Exhibit B, Plaintiffs' Requests for Admissions—whose authenticity USWA admits and which speaks for itself.

Plaintiffs' Reply:

The Court will determine which of the admitted facts are material.

Defendants' claim to require further discovery is a sham to avoid entry of Judgment against it. It has filed scores of affidavits and declarations, including one from McBride's campaign director Guenther, (Guenther Declaration, ¶ 6) and one from USWA General Counsel Kleiman, who during the 1977 election, withdrew—as he has done here—from representing the union so that he could support the candidacies of McBride and his running mates.

As admitted below in paragraph 26, McBride, his running mates, his advisors and others had the opportunity to inspect Sadlowski's list of contributors. McBride and all of his running mates, along with Guenther and Kleiman have filed affidavits or declarations herein. If there was a single fact contained in this paragraph which was remotely untruthful, it would have been denied by all of these sources to which the USWA has ready and exclusive access.

Plaintiffs' Statement of Fact:

26. During the course of the 1976-77 USWA election campaign, as a result of litigation between Sadlowski and McBride, the candidates had the opportunity to inspect each others' list of campaign contributors. Sadlowski Affidavit, ¶ 8; Requests for Admissions and Responses, ¶ 6, Exhibit B).

Defendants' Response:

26. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. Admitted.

Plaintiffs' Reply:

The Court will determine which of these admitted facts are material.

Plaintiffs' Statement of Fact:

27. A comparison of the list of contributors to McBride's campaign (Exhibit B, Requests for Admissions) with the list of officers and employees contained on the USWA's then most recent financial report filed with the Department of Labor revealed:

a. Approximately 90% of the contributions the McBride campaign admitted receiving came from the officers and staff of the USWA.

b. Approximately one-third of the USWA's officers and staff contributed to McBride's campaign.

c. By far, the largest amounts received by McBride came from USWA officers and staff.

d. Most of the USWA's District Directors contributed at least $1,000 to the McBride campaign.

e. The staff members who made "contributions" ordinarily paid $500 each.

f. In some USWA Districts, every single staff member contributed an identical amount.

g. Sometimes the payments to the McBride campaign by staff were made in "installments". (Hauptman Affidavit, ¶¶ 5, 6; Exhibit B, Requests for Admissions; Sadlowski Affidavit, ¶ 8).

Defendants' Response:

27. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. This paragraph is a purported characterization of a document—Exhibit B, Plaintiffs' Requests for Admissions—whose authenticity USWA admits and which speaks for itself. USWA has not undertaken an item-by-item analysis of Exhibit B and is not inclined to assume that burden unless

and until it is shown to be material to the disposition of this case.

Plaintiffs' Reply:

The Court will determine which facts are material. The facts set forth herein are highly material to disposition of Plaintiffs' Motion.

Defendant USWA has admitted the authenticity of the list of McBride contributors. Its refusal to admit or deny the facts set forth in this paragraph regarding the manner and sources of McBride's campaign contributors cannot properly be based on its reluctance to conduct an item-by-item analysis. Accordingly, the facts set forth herein should be deemed to be admitted.

Plaintiffs' Statement of Fact:

28. Included in the remaining 10% of the funds which the McBride campaign reported receiving were contributions from nonmember lawyers representing the USWA, then AFL-CIO Secretary-Treasurer, Lane Kirkland, officials of the Amalgamated Clothing Workers and ILGWU and former Massachusetts Governor Endicott Peabody. (Summers Affidavit, ¶ 15; Hauptman Affidavit, Attachment A; Sadlowski Affidavit, ¶ 11).

Defendant's Response:

28. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. USWA cannot verify the "remaining 10%" figure (see par. 27 above). Otherwise, the paragraph is admitted, with the additional notation that the contribution of Governor Peabody was returned, as were all contributions (except one) made by law firms. (Guenther Declaration, ¶ 6).

Plaintiffs' Reply:

The Court will determine which facts are material.

With respect to USWA's unwillingness to verify the "remaining 10%" figure, Defendants' refusal must be rejected and the 10% figure accepted as true in the absence of any legitimate basis for denial.

USWA's caveat regarding returned contributions is accepted as true by Plaintiffs for purposes of this Motion.

Plaintiffs' Statement of Fact:

29. During the 1976-77 election campaign, Sadlowski and his running mates were represented by attorney Rauh, who instituted on their behalf two suits in the pre-election period, *Rodriguez* v. *United Steelworkers of America*, (C.D. Calif., C.A. No. 76-3452-LTL); *Sadlowski* v. *United Steelworkers of America*, (W.D.Pa., C.A. No. 76-1420) and a suit, following the election, against the Secretary of Labor for failing to investigate and failure to institute suit to set aside the election which the USWA claimed had been won by McBride and his slate, *Sadlowski* v. *Marshall*, (D.D.C., C.A. No. 78-0250) (C.A.D.C., No. 79-1461) (Summary Judgment for Defendant's aff'd). (Complaint & Answer, ¶ 21). Attorney Rauh received no compensation for his services rendered in connection with any of the three suits discussed in this paragraph. (Requests for Admissions & Responses, ¶¶ 8, 11; Sadlowski Affidavit, ¶ 2).

Defendant's Response:

29. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. The first sentence is admitted, with the additional notation that two of the lawsuits listed were frivolous and treated accordingly by the courts (Kleiman Declaration, ¶ 15). As to the second

sentence, USWA lacks sufficient knowledge to respond without discovery.

Plaintiffs' Reply:

The Court will determine which facts are material.

The Court can take judicial notice of the suits which were filed and draw its own conclusions whether they were frivolous. (F. R. of Evid., Rule 201). The *Rodriquez* case was brought to assure that one of Sadlowski's running mates would not lose his eligibility because the Local of which he was a member was being disbanded. When assurances were made by USWA that Rodriquez's eligibility would not be affected, the issue became moot, and afterwards the suit was voluntarily dismissed. The 1976 action filed by Sadlowski in the Western District of Pennsylvania resulted in entry of a consent order which *inter alia* assured neutrality of the USWA publication *Steel Labor* and access by Sadlowski and his running mates to certain polling information, which had previously been withheld. The post-election suit filed in this Court against the Secretary of Labor was not treated as frivolous by Judge Gasch, who wrote a lengthy opinion granting the Defendants' Motion for Summary Judgment. That matter is now pending before the Supreme Court on petition for writ of certiorari.

Although Attorney Rauh has *not* been compensated for his services in these cases, this fact is not essential to disposition of the present Motion.

Plaintiffs' Statement of Fact:

30. Sadlowski concentrated his campaign fund raising efforts among USWA rank and file members in his District and among members of the general public, through mail solicitations, raffles, receptions and dinners. (Complaint, § 23; Sadlowski Affidavit, ¶ 2).

Most of the fund raising among rank and file USWA members was done on a face-to-face, personal basis through the holding of raffles or bingo games, holding dinners or beer busts, holding campaign rallies and passing the hat, selling jackets or the like, and through other personal requests, all of which were done to raise money from among the rank and file when Sadlowski ran for the USWA Presidency in 1976 and 1977. (Sadlowski Affidavit, ¶ 6).

Defendant's Response:

30. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. Admitted that Sadlowski concentrated his campaign fund raising among members of the general public. Also, the implicit statement that Sadlowski did not attempt fund-raising among USWA members in Districts other than District 31 is admitted. Disputed that Sadlowski undertook serious fund-raising efforts among USWA members in District 31: while there were some efforts, the coordinator of his campaign has acknowledged the lack of serious effort, and Sadlowski does not even claim to have utilized the method which candidates normally use and which is most effective: having rank and file members conduct in-plant collections. (Kleiman Declaration, ¶ 8). In any event, USWA cannot without discovery ascertain the exact extent of Sadlowski's fund-raising efforts in District 31.

Plaintiffs' Reply:

The Court will determine which facts are material.

USWA's claim to require further discovery is a sham to avoid entry of judgment against it. As noted above, USWA has exclusive access to a wide range of persons who reviewed, dissected and analyzed the contributions the Sadlowski slate received during the 1976-77 cam-

paign. Though USWA has filed affidavits or declarations authored by McBride, his running mates, his campaign treasurer and the Union's General Counsel, who recused himself from the election related litigation so that he could support the McBride slate, none of these individuals —virtually all of whom were familiar with Sadlowski's fund-raising efforts—has stated a single fact at variance with the facts contained in the foregoing paragraph. Accordingly, the facts stated herein should be deemed to be admitted.

Plaintiffs' Statement of Fact:

31. Sadlowski also received campaign contributions from his father, who was a USWA member for 32 years before his retirement, his mother and sisters, all of whom were nonmembers of USWA. (Sadlowski, Sr. Affidavit, ¶¶ 3-6). The Sadlowski slate also arranged for and made fund raising mailings to persons on lists of liberal and pro-labor organizations which had been obtained from various organizations. (There are no lists of USWA members who are known contributors to candidates for USWA offices.) He also raised funds at receptions, dinners and through raffles in which nonmembers participated and contributed. (Complaint & Answer, § 23; Sadlowski Affidavit, ¶¶ 6, 10).

Defendant's Response:

31. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. Admitted, except for two items. USWA has no way of determining, without discovery, whether the lists used for Sadlowski's fund raising mailings were solely those associated with "liberal and pro-labor organizations." While it is literally true that there are no lists of USWA members "who are known contributors to candidates for USWA offices," the state-

ment is misleading: a candidate for USWA office has a right to use USWA's mailing lists to make fund raising mailings, at his own expense, to all of USWA's members or to any readily segregable sub-group of USWA's membership. (Kleiman Declaration, ¶ 16).

Plaintiffs' Reply:

The Court will determine which facts are material to disposition of Plaintiffs' Motion.

For purposes of the present Motion, USWA's admission that some of Sadlowski's mailing to nonmembers were obtained from lists of "liberal and pro-labor" organizations is sufficient.

USWA's admission that "it is literally true" there are no lists of USWA members who are known contributors to candidates for USWA offices is sufficient for present purposes. Its *caveat* that partial mailings can be made to "readily segregable sub-group[s] of USWA's members" does not render the foregoing admission misleading.

Plaintiffs' Statement of Fact:

32. McBride and his slate and their advisors and supporters made the acceptance of campaign contributions and assistance by the Sadlowski slate a principal campaign issue in the last 6 to 8 weeks before the February 1977 election. Despite widespread publication of McBride's allegations against the Sadlowski slate, by McBride's own count, Sadlowski won a majority of votes among USWA members employed in "basic steel." By the official tally—which the Sadlowski slate never accepted as correct—members of the slate received nearly a quarter million votes, the largest vote ever cast for insurgent election challengers in the USWA (excluding Abel, who was the Secretary-Treasurer and had majority support of the USWA Executive Board, when he successfully challenged David McDonald in 1965). (Sadlowski Affidavit, ¶ 11; eBnson Affidavit, ¶¶ 10, 12, 18).

Defendant's Response:

32. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. First sentence admitted, except that McBride, his slate and supporters did not "make" this issue; they were responding to a concern raised by the conduct of the Sadlowski slate and its non-member supporters. (Williams Affidavit, ¶¶ 9, 10). Second sentence denied: USWA is not aware of "McBride's own count," if any exists, but the official tally by USWA's International Tellers reflects that McBride, not Sadlowski, won a majority of the votes cast by members in the basic steel industry (Kleiman Declaration, ¶ 7). Third sentence admitted as to the office of President, with the additional notation that in every contested election for USWA President the percentage of the vote received by the losing candidate (Donald Rarick 1956; David McDonald 1965; Emil Narick 1969) was approximately the same as that received by Sadlowski in 1977 or greater. (Benson Affidavit submitted by plaintiffs, ¶¶ 5, 12, 16, 18).

Plaintiffs' Reply:

The Court will determine which facts are material.

For purposes of disposition of the present Motion, Plaintiffs will accept the following admissions made by USWA in responding to the foregoing facts:

1. "Responding to a concern" raised by Sadlowski's fund raising efforts, the matter of Sadlowski's contributors became a principal campaign issue in the last 6 to 8 weeks before the February 1971 election;

2. Sadlowski and his slate captured a majority of the votes cast by USWA members in "basic steel", (Kleiman Declaration, ¶ 7 at p.11).

3. According to USWA's official tally, Sadlowski and his slate received nearly a quarter-million votes in 1977, the largest vote ever cast for insurgent election challengers in the USWA (except during 1965 when then incumbent Secretary Treasurer Able, with majority support from the Union's Executive Board defeated David McDonald).

Plaintiffs' Statement of Fact:

33. In nearly every situation in the recent history of the American labor movement where an insurgent has successfully won a major union position, that individual has had the services of a dedicated lawyer who has provided hundreds of hours of service in representing the candidate. Few if any opposition candidates can pay for such services at normal commercial rates. Without such assistance, very few opposition groups would have * * *

Defendant's Response:

33. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. The entire paragraph is denied. In USWA, many candidates have defeated incumbents, or candidates supported by incumbents, without the benefit of hundreds of hours of service by lawyers. (Declarations of Frank Lesaganich, ¶¶ 3-7; Mitchel F. Mazuca, ¶¶ 2-7; Joseph Odorcich, ¶¶ 4-5).

Plaintiffs' Reply:

The Court will determine which issues are material.

USWA does not deny that the observations of Professor Summers may be accurate as to unions generally. Indeed, the Kleiman Declaration concedes this point: "I do not profess to know enough about other unions to be able to say whether Professor Summers' observa-

tions may be correct as to some other unions." (Kleiman, p. 10).

As to the USWA, Defendant's own admissions and declarations filed during the course of this case support rather than refute the fact that USWA insurgents have found it necessary to secure nonmember legal assistance in connection with USWA elections. In addition to USWA's admission herein that Sadlowski received legal assistance from Attorney Rauh in connection with his District Director and presidential candidates (see ¶ 21; *supra*) the Declarations USWA has filed disclose the following:

a. *Joseph Odorcich*: After the USWA Executive Board reversed his election and installed the incumbent, he filed a complaint with the Department of Labor, which then sued the USWA. The suit was settled when USWA consented to a rerun. Throughout the process, Odorcich had counsel:

> "In connection with the protest to the 1969 election, I utilized the services of a Pittsburgh attorney. The attorney was introduced to me by a friend who was also a USWA member. The attorney rendered legal services to me without charge." (Odorcich, ¶ 5);

b. *Frank Lesaganich*:

> "I was not represented by a lawyer at any time during the 1969 election campaign until after the voting had been completed. Post-election challenges were filed with respect to the voting at several locals, which I knew would be decided ultimately by the International Executive Board. As I knew I had received a majority of the votes, I had an interest in assuring that those challenges would not be upheld. Accordingly, I asked a lawyer to advise me what position to take on those challenges. The lawyer also accompanied me to Pittsburgh to attend the

final tally of votes by the Honest Ballot Association. I never paid a fee to the lawyer." (Lesaganich, ¶ 7).

c. *Michael Mazuca*:

Consulted a lawyer for a short time during his 1969 election for which no fee was paid. (Mazuca, ¶ 7).

d. *Walter Bachowski*:

Kleiman declaration admits that Bachowski, now a District Director was represented by Attorney Rauh in connection with his challenge to the 1973 election in *Dunlop* v. *Bachowski*, 421 U.S. 560 (1975), (Kleiman, ¶ 9).

e. *Frank Valenta*:

Though USWA has filed a lengthy declaration from Valenta, the Declaration is silent about Valenta's efforts to overturn the 1973 USWA election before the USWA Executive Board, the Department of Labor and ultimately in a suit against the Secretary of Labor of which this Court should take judicial notice. In that case, Valenta was represented by Thurlow Smoot. *Valenta* v. *Brennan and the United Steelworkers of America*, 90 LRRM 3313 (N.D. Ohio, 1974); 90 LRRM 3316 (N.D.Ohio, 1975).

Plaintiffs' Statement of Fact:

34. Plaintiffs Sadlowski and Samargia may be candidates in 1981 for USWA offices subject to the "outsider" rule. (Complaint, ¶ 36; Sadlowski Affidavit, ¶¶ 2, 15; Samargia Affidavit, ¶¶ 2, 8, 9).

Defendant's Response:

34. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be ma-

terial, USWA responds as follows. Admitted that Sadlowski and Samargia "may" be candidates for USWA offices in 1981 (any USWA member "may" be), but denied that their decision whether to be candidates will be determined by the existence or non-existence of Art. V, § 27. (Kleiman Declaration, ¶ 17).

Plaintiffs' Reply:

The Court will determine which facts are material.

For present purposes, Defendant's admissions that Sadlowski and Samargia may be candidates for offices subject to the "outsider" rule are sufficient to confer standing upon them to challenge the "rule."

Plaintiffs' Statement of Fact:

35. Plaintiffs Sadlowski and Samargia are steelworkers who until attaining union office worked respectively in the mills and iron ore mines. (Complaint & Answer, ¶ 25). Neither Sadlowski, Samargia nor anyone else similarly situated (*i.e.*, candidates without "official family" endorsement and staff contributions) has the personal assets and resources to underwrite effective campaigns for International or District Director offices. (Complaint, ¶ 25; Sadlowski Affidavit, ¶ 2; Samargia Affidavit, ¶ 2).

Defendant's Response:

35. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. First sentence is literally true, but it should be noted that Sadlowski became a member of the USWA staff many years ago (See Affidavit of Sadlowski, Jr., ¶ 3, submitted by plaintiffs), and that Samargia has been a union officer for several years (Affidavit of Samargia, ¶¶ 3, 4, submitted by plaintiffs). USWA has no way of responding to the second sentence

without discovery, except to note that many candidates in USWA elections have defeated incumbents, or candidates supported by incumbents, without the need to rely on contributions from non-members of USWA. (Declarations of Leseganich, ¶¶ 3-7; Mazuca, ¶¶ 2-7; Odorcich, ¶¶ 3-5; Coyne, ¶¶ 3-5; Valenta, ¶¶ 3-6. See also Roop Affidavit and Roop Declaration).

Plaintiffs' Reply:

The Court will determine which facts are material.

USWA has no need for further discovery. Its affidavits, declarations and admissions confirm that campaigns for principal USWA offices are extremely costly. Indeed, USWA has conceded the authenticity of McBride's list of contributors which reflects receipt of nearly $200,000 in campaign funds. Similarly, there is no need for discovery regarding USWA's assertion that "many candidates have defeated incumbents without the need to rely on contributions from nonmembers" for the simple fact that very, very few candidates have ever successfully defeated an incumbent, and all of those who did so unquestionably received funds or assistance which is now prohibited by the "outsider" rule.

Plaintiffs' Statement of Fact:

36. In the 1977 election, Sadlowski received, according to the Union's tabulation, nearly 250,000 votes; he and his running mates secured 40% or more of the votes cast for their respective positions. (Benson Affidavit, ¶ 23).

Defendant's Response:

36. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. Admitted.

Plaintiffs' Reply:

The Court will determine whether these admitted facts are material to disposition of Plaintiffs' Motion.

Plaintiffs' Statement of Fact:

37. Prior to 1978, the USWA had no election rule apart from its ban on use of "employer" and "union" funds) barring contributions and assistance from family members, friends and acquaintances who were not USWA members. (Requests for Admissions & Responses, § 12).

Defendant's Response:

37. Admitted.

Plaintiffs' Statement of Fact:

38. In advance of USWA's 1978 Convention, McBride and his political supporters circulated form resolutions calling for a ban on outsider contributions in three USWA districts almost exclusively among local unions which had voted for McBride. (Balanoff Affidavit, ¶¶ 9, 11; Olingy Affidavit, ¶¶ 5-8).

Defendant's Response:

38. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. This paragraph is denied in its entirety. Resolutions were circulated in three districts to ascertain whether there was membership support for a ban on outsider contributions; such resolutions were circulated to locals which had voted for McBride as well as to locals which had voted for Sadlowski; and support for such a ban was evidenced by a majority of members in locals of both descriptions. (Williams Declaration, ¶¶ 7-10; Olingy Affidavit, ¶ 7, submitted by plaintiffs).

Plaintiffs' Reply:

The Court will determine whether the facts set forth in this paragraph are material.

Contrary to USWA's response, its papers support rather than deny the facts stated in this paragraph. As noted in Plaintiffs' statement, the basis for the facts stated in this paragraph are set forth in the Balanoff and Olingy Affidavits. Balanoff stated: "Virtually all of the resolutions came from 3 of the USWA's 25 Districts, namely, District 6, District 23 and District 37. Each of these Districts is thoroughly controlled by McBride (Balanoff, ¶ 11). Olingy analyzed how the local unions from these three Districts which submitted resolutions had voted in the McBride-Sadlowski election and found that 192 had supported McBride and 10 had supported Sadlowski. USWA has denied none of the foregoing, which therefore must be deemed to be admitted. Rather, Lynn Williams, McBride's running mate, now admits that the "outpouring" of resolutions from his home District, District, 6 "no doubt" "resulted from his conversations" with District Director Stu Cooke. (Williams Declaration, ¶ 7). Williams further admits that the process of preparing form resolutions at the District level for submission to the Locals in Districts 23 and 37 "was similar to the process I have described above with respect to District 6." (Williams Declaration, ¶ 9).

Plaintiffs' Statement of Fact:

39. McBride and his closest political advisors instructed USWA's lawyers to research and draft the "outsider" rule more than a month before the September 1978 Convention. (Balanoff Affidavit, ¶ 11).

Defendant's Response:

39. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material,

USWA responds as follows. This paragraph is denied in its entirety. USWA's lawyers, on their own initiative, drafted a provision dealing with outsider contributions without being "instructed" to do so by McBride or his closest advisors, as part of their routine preparation of materials bearing upon matters which they believe may be considered at the Convention. The principal work on Art. V, ¶ 27 was done during the week preceeding the Convention. (Kleiman Declaration, ¶ 18).

Plaintiffs' Reply:

The Court will determine which facts are material.

Far from disputing the foregoing facts, the Declaration of USWA General Counsel Kleiman confirms the fact that he and others had begun researching and drafting the "outsider rule" more than a month before the 1978 Convention:

> "In the months preceding every USWA Convention; USWA's lawyers undertake to draft proposed resolutions, constitutional amendments, etc., in connection with matters which they anticipate may come before the Convention. Because I knew that a proposal to ban outsider contributions was being actively considered at various levels within the union, I had a draft provision prepared." (Kleiman Declaration, ¶ 18).

Though Kleiman fails to state how he was aware that an "outsider" issue was under consideration, he goes on to say that he was not "instructed" to prepare a proposal by McBride or McBride's closest advisors but that he prepared the proposal on his own initiative. What Kleiman fails to acknowledge or admit at any place in his 22-page Declaration is that he was and is himself one of McBride's closest advisors and that he recused himself from official involvement with the 1977 election so that he could support the McBride slate. (Sadlowski Supplemental Affidavit, ¶¶ 5, 6).

Plaintiffs' Statement of Fact:

40. McBride presaged introduction of the "outsider" amendment on the opening day of the Convention—before it had even been presented to or approved by the Convention's Constitution Committee—when he delivered his opening address and stated:

> "And we will continue to elect our Officers by secret ballot, rank and file voting! And we will continue to do so without any interference by outsiders or interlopers from the campuses or Hollywood or the foundations." (Convention Proceedings, p. 6; Appendix G, Affidavit of Lynn Williams).

Defendant's Response:

40. Admitted that McBride made the quoted statement during the first day of the Convention. The remainder of this paragraph is editorial, is not based upon any evidence, and requires no response.

Plaintiffs' Reply:

The portion of the foregoing paragraph which USWA declines to respond to is not editorial and is based on fact. The Affidavit of James Balanoff fully supports the statement that the Constitution Committee did not even pass on their matter until well after the convention had begun. (Balanoff Affidavit, ¶¶ 7, 10-12).

Plaintiffs' Statement of Fact:

41. The Constitution Committee which approved the rule was chaired by McBride's running mate Lynn Williams and its Secretary was another running mate, Leon Lynch. (Requests for Admissions & Responses, ¶ 18).

Defendant's Response:

41. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In

the event the Court deems these matters to be material, USWA responds as follows. Admitted.

Plaintiffs Reply:

The Court will determine which of these admitted facts are material to disposition of Plaintiffs' Motion.

Plaintiffs' Statement of Fact:

42. McBride addressed the Convention for "perhaps more than five minutes" to urge adoption of the rule. (Convention Proceedings, pp. 252-53; Appendix G, Lynn Williams Affidavit). The Chairman of the McBride Team Campain Committee, District Director Bruce Thrasher also urged adoption of the "rule". (*Id.* at 246).

Defendant's Response:

42. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. Admitted.

Plaintiffs' Reply:

The Court will determine which of these admitted facts are material.

Plaintiffs' Statement of Fact:

43. The "outsider" rule adopted at the USWA Convention appears in Exhibit A to the Complaint, pp. 42-47. (Complaint & Answer, ¶¶ 12, 30). The "regulations" appear at pp. 239-45 of the Convention Proceedings. (Apendix G, Lynn Williams Affidavit).

Defendant's Response:

43. Admitted.

Plaintiffs' Statement of Fact:

44. Of all the national and international labor organizations in the United States, USWA is the only one barring candidates from receiving contributions or assistance from nonmembers. (Summers Affidavit, ¶ 18).

Defendant's Response:

44. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. USWA does not purport to have knowledge of the rules applicable in every other union, and ¶ 18 of the Summers Affidavit, which is the only "evidence" cited in support of the statement, does not support it. USWA does not dispute Prof. Summers' statement that in 1950 he "examined the discipline procedures of some 180 international unions" and found no ban on outside contributions (*id.* ¶ 18), but notes that if, 30 years later, he had "examined the discipline procedures" of USWA he would not have found Art. V, ¶ 27, for it does not appear among the "discipline procedures" in USWA's Convention.

Plaintiffs' Reply:

The Court will determine which facts are material.

USWA's feigned ignorance of whether any other union has adopted a rule similar to the "outsider" rule cannot be accepted. Can there be any doubt that if such a rule had been adopted by any other union anywhere in the United States or Canada, that the USWA would know about it and bring it to the Court's attention.

Nor can its efforts to denigrate the Affidavit of Professor Summers succeed. Professor Summers did not base his statement that the USWA "outsider" rule was the "first" such rule ever adopted solely upon his 1950 study of union disciplinary procedures, but rather upon

35 years of study, writing, consultancies and teaching which permits him to state a fact which USWA has not denied and cannot deny: that he has studied and written more on union democracy and elections than anyone else and that he is regarded as an authority in this field. (Summers Affidavit, ¶ 7). Finally, it should be noted that violation of the "rule by a member is an offense punishable by fine, suspension or expulsion under the USWA Constitution.

Plaintiffs' Statement of Fact:

45. The "outsider" rule does not apply to candidates in USWA elections for Local Union offices. (Requests for Admissions & Responses, ¶ 14).

Defendant's Response:

45. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. Admitted. The reasons why the rule was deemed unnecessary and inappropriate for Local Union offices are set forth in Williams Affidavit, ¶ 11(1), and are incorporated herein by reference.

Plaintiffs' Reply:

The Court will determine the materiality of these admitted facts.

Plaintiffs' Statement of Fact:

46. Edward Sadlowski, Sr. and Leonard Rubenstein have made contributions to candidates in previous USWA elections and they and other nonmembers similarly situated would make similar contributions in the future but not for the "outsider" rule. (Sadlowski, Sr. Affidavit, ¶¶ 2-5, 7; Rubenstein Affidavit, ¶¶ 6, 7).

Defendant's Response:

46. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. Admitted.

Plaintiffs' Reply:

These admitted facts are highly material in that they establish that Plaintiffs Sadlowski, Sr. and Rubenstein have standing to sue.

Plaintiffs' Statement of Fact:

47. A major consideration by Sadlowski and Samargia in determining whether they will seek election to International or District office will be whether the "outsider" rule is valid or invalid. (Sadlowski Affidavit, ¶ 15; Samargia Affidavit, ¶ 9).

Defendant's Response:

47. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. This paragraph is disputed in its entirety. The decision by Sadlowski and Samargia whether to seek election in USWA will not turn upon the existence or non-existence of Art. V, ¶ 27. (Kleiman Declaration, ¶ 17).

Plaintiffs' Reply:

In light of USWA's admission that both Sadlowski and Samargia may be candidates for offices subject to the "outsider" rule, the facts stated in this paragraph are not material for present purposes.

Plaintiffs' Statement of Fact:

48. The policies and practices of the USWA have an impact on nonmembers of the USWA. (Complaint & Answer, ¶ 45).

Defendant's Response:

48. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. As ¶ 45 of USWA's Answer states: "Admitted that the policies and practices of unions have some indirect impact upon persons who are not members of unions."

Plaintiffs' Reply:

The Court will determine which facts are material.

The differences between the Plaintiffs' statement and Defendant's Admission are semantic. For present purposes, Defendant's admission that "the policies and practices of unions have some indirect impact on persons who are not members of unions" is sufficient.

Plaintiffs' Statement of Fact:

49. There were no remedies available within the USWA to Sadlowski or Samargia to obtain nullification or invalidation of the "outsider" rule within four months of the date when this suit was filed. (Complaint & Answer, ¶ 63).

Defendant's Response:

49. Admitted that there are no remedies available within USWA to Sadlowski or Samargia to obtain "nullification or invalidation" of Art. V, ¶ 27, "except through persuasion of the majority of the delegates at the upcoming 1980 Convention to vote to amend the Constitution to re-

move." Art. V, ¶ 27. (Answer, ¶ 63). But further noted that there *is* a means available within USWA to satisfy the concerns expressed in Count IV of the Complaint, and that proceedings relating thereto are presently pending. (Kleiman Declaration, ¶ 15).

Plaintiffs' Reply:

USWA's express admission that there were no remedies available to Sadlowski and Samargia to obtain nullification or invalidation of the rule until the September, 1980 USWA Convention—which will not convene until more than 10 months after this action was filed—is sufficient for present purposes.

USWA's implicit admission that there *was* no remedy relative to Count IV of which Plaintiffs were aware when this suit was filed is noted; but this is a matter of law, not fact.

Plaintiffs' Statement of Fact:

50. Although the express terms of the "outsider" rule required that members of the Campaign Contribution Administrative Committee were to be appointed by the USWA Executive Board "not later than May 1, 1979," the Executive Board did not make the appointments until January 18, 1980. (Sadlowski Affidavit, ¶ 17 and Exhibit A)

Defendant's Response:

50. USWA denies that the matters set forth in this paragraph are material to the issues in this lawsuit. In the event the Court deems these matters to be material, USWA responds as follows. This paragraph is denied in its entirety. The members of the CCAC were appointed by the USWA Executive Board on May 3, 1979 (Kleiman Declaration, ¶ 4). When two members of the CCAC subsequently resigned because of the press of other business,

their successors (the current members) were appointed by the USWA Executive Board on September 25, 1979 *(Ibid)*.

Plaintiffs' Reply:

USWA has not denied that the appointments to the CCAC were not made in accordance with the schedule set forth in the Constitution; nor has it denied that the USWA Press Release dated January 18, 1980 (Exhibit A, Sadlowski, Jr. Affidavit) contains the first public announcement of the appointments, which is all that is necessary for purposes of the present Motion. (Kleiman Declaration, p. 5).

The Declaration of Mr. Kleiman does, however, require further response if for no other purpose than to illustrate the wisdom of Judge Brown's admonition regarding the submission of affidavits by counsel:

> [We] think it an unnatural, if not virtually impossible, task for counsel, in his own case to drop his garments of advocacy and take on the somber garb of an objective fact-stater." *Inglett & Co.* v. *Everglades Fertilizer Co.*, 255 F.2d 342, 349 (C.A. 5, 1958).

As noted above, while purporting to be an objective fact-stater, Mr. Kleiman was and remains a confidant and advisor to Mr. McBride and the "official family". It should come as no surprise that Mr. Kleiman tries to put the "best face" on the difficulties that he and the Union had in trying to convince impartial, public-spirited citizens to administer this self-perpetuation rule. Thus, while Mr. Kleiman states that Monsignor Higgins and then Professor (now Circuit Judge) Edwards resigned from CCAC because of the press of other business after initially accepting such appointments, he fails to mention that both declined only after they became fully aware that the "rule they were to administer was decidely anti-democratic.

While attaching to his declaration a copy of Msgf. Higgins' biography and the letters of acceptance and resignation by Prof. Edwards, Mr. Kleiman plays an old lawyer's trick when he quotes from Msgr. Higgins' letter of resignation rather than attaching it. The simple facts are that both Msgr. Higgins and Circuit Judge Edwards resigned their CCAC positions almost immediately after attorney Rauh wrote to them. In fact, the dates of the correspondence leave no doubt as to the real reasons for their resignations from CCAC:

5/ 3/79—Msgr. Higgins appointed to CCAC

5/17/79—Rauh letter to Msgr. Higgins

5/21/79—(Dictated 5/18/79) letter Msgr. Higgins to Rauh

5/29/79—Letter Rauh to Msgr. Higgins

5/29/70—Msgr. Higgins resigns CCAC

5/ 3/79—Professor (Circuit Judge) Edwards appointed to CCAC

7/20/79—Letter Rauh to (Judge) Edwards

7/24/79—Edwards resigns CCAC

8/ 2/80—Edwards secretary to Rauh that Edwards does not presently sit as CCAC member.

(Declaration of Eva Bothwell, ¶¶ 2-5, Exhibits A-D).

CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully submit that there are no genuinely disputed material facts, and for the reasons stated in Plaintiffs' initial and reply memorandum, they are entitled to entry of summary judgment as a matter of law.

[Signatures Omitted in Printing]

PLAINTIFFS' SUPPLEMENTAL AFFIDAVITS

SUPPLEMENTAL AFFIDAVIT OF HERMAN BENSON

City of New York
State of New York

I, Herman Benson, being duly sworn, voluntarily depose and state as follows:

1. I have previously filed an affidavit in this action describing my background and my knowledge of previous elections conducted in the United Steelworkers of America and my conclusions regarding the rule adopted by USWA which prohibits candidates for USWA office from receiving contributions and assistance from non-members.

2. In connection with this case, I have also read the Affidavits and Declarations submitted by others.

3. I have read with particular interest the Declaration submitted by Bernard Kleiman, USWA General Counsel. The Kleiman affidavit suggests that one need have no misgivings about the impact of the new election rules, because according to him, the union has a long record of democracy in elections. Although Kleiman's account of past USWA elections differs from the facts, it could hardly offer reassurances about the future even if his historical analysis was correct. The "outsider" rule applies not to the past, but to the future; and it is the future of democracy in the Steelworkers that is endangered.

4. The historical record, as USWA presents it, is incomplete and misleading. In his affidavit (p. 13), Mr. Kleiman notes that "in the period preceding the 1977 election, Sadlowski and McBride . . . received virtually identical news coverage" in the union's press. This as-

sertion is characteristic of the union officialdom's effort to take credit for rights which were won over their own opposition. Equal treatment became possible only because, with the assistance of the Association for Union Democracy, the Sadlowski slate sued in Federal Court and won the right, under court supervision, to monitor issues of the union paper that were published before the voting. The "outsider" rule is intended, in part, to make this kind of assistance by AUD illegal.

5. Mr. Kleiman evades the facts presented in my affidavit by dismissing them broadly as "inaccurate", although, where he does deal with specific statements, he accepts them as true. In part, his response degenerates into a quibble such as when he insists that one candidate was "little known" and not, as I put it, "unknown."

6. Mr. Kleiman does not dispute my assertion that supporters of opposition candidate Joseph Molony were physically beaten. Nor does he deny that insurgent Donald Rarick was beaten in the union's convention hall. He likewise does not deny the unbelievably lopsided tallies in District 31. He does not deny that there was fraud in the election of District 31 Director in 1973. He does not deny that in the crucial election of 1965 when incumbent president David McDonald was defeated by then Secretary-Treasurer I.W. Abel, each side accused the other of stealing votes—and both were strategically located so as to be familiar with prevailing union practices. While Mr. Kleiman emphasizes that Joseph Odorcich, Walter Bachowski, Frank Valenta, Edward Sadlowski, and Joseph Kender won election to USWA national office, by his own admission (p. 5) they did so only after complaining to the U.S. Department of Labor that they had been counted out in what they charged were illegally run elections.

7. AUD does not support and never has supported any candidate for any union office. It did not support Sadlowski's candidacy. AUD did take steps to support the

right of the insurgents to a fair election, to an honest count, and to enforcement of their legal rights under the LMRDA. The Steelworkers' administration, however, interprets any effort to defend the legal rights of a candidate as support of his election campaign.

8. The Steelworkers' Memorandum (p. 40) points to "many USWA members earning over $40,000 per year", obviously to create the impression that it should be easy to collect money from so affluent a group of workers. Unlike these hypothetical world-champion wage earners, the average steelworker must be satisfied with a much more modest income. According to the Bureau of Labor Statistics Bulletin 2031 published in 1979, the average annual income of basic steelworkers, among the union's highest paid members, was $14,176 in 1975 for those lucky enough to be employed in all four quarters. In that year, the hourly rate was $6.94. By January, 1980, the rate rose to $10.85 which would mean an equivalent yearly income of perhaps $22,000. Among those outside basic steel and those who faced long layoffs and did not work during all four quarters, annual income was, no doubt, substantially less. By current standards for working people, USWA basic steelworkers do not earn a bad union wage; but after allowing for massive tax withholdings and inflation, there is not much left to fling about with abandon.

9. Moreover, the issue is not whether members can afford to make substantial contributions, but whether insurgent candidates can count exclusively upon such contributions. Fewer than half the members vote and those who do vote are dispersed in thousands of locals all over the United States and Canada. It is virtually impossible for an insurgent to eke out substantial campaign funds from small donations from scattered union members. The new rule, which will disclose to the incumbents the names of contributors, will make it even more difficult for challengers to obtain contributions from union members.

10. While the union officialdom speaks glowingly of the affluence of USWA members and the feasibility of raising substantial sums from membership contributions, their optimism is belied by their own reliance on other techniques. The record here shows that to finance their own campaigns, the incumbents — particularly those in USWA's top offices—depend generally upon large donations from staff employees. Needless to say, the union officialdom would not rely upon voluntary membership contributions to finance the union itself. They unsurprisingly admit that the union has bargained for agency shop, maintenance of membership, and checkoff arrangements in order to assure the union's financing.

11. USWA offers five affidavits purportedly to demonstrate that on "numerous occasions" insurgent candidates have defeated incumbent USWA district directors without relying upon campaign contributions from nonmembers. While there have been literally hundreds of positions filled in Steelworker elections over the years, the "numerous occasions" noted in the five affidavits in which incumbents were defeated by insurgents add up, upon examination, to only four. In the three other elections listed by Declarants, there were either no incumbents or no insurgents.

12. The union makes much of Harry Lester's claimed ability to raise funds from union members. The precise amount and source of his campaign money can be verified only after the union makes details available to other candidates. However, the suggestion that he is in fact an insurgent candidate is without basis. He is not opposing an incumbent, for the present office-holder is retiring. For the moment, the Administration apparently finds it convenient to maintain a publicly neutral stance; but my personal observations confirm that Lester is surely no insurgent. I met three of Lester's supporters in January, 1980 at a student-labor conference in Ann Arbor, Michigan. In reply to my questions, Lester's supporters told

me that Lester, their man, was not running in opposition to the administration.

13. There *has* been insurgency in the Steelworkers union, and in exceptional instances it has been possible for insurgents to break through the solid wall of official hostility. But this has occurred rarely, and each of these contests occurred before the adoption of the new union rule. Accepting as true everything contained in the USWA affidavits, one could conclude no more than that under extraordinary conditions it has been possible for rank and file opposition, without nonmember support, to mount an effective campaign against organized incumbents. Union democracy including a realistic opportunity for challenge should be the rule and not merely an extraordinary exception. By cutting off nonmember support while leaving incumbents free to look primarily to union staff for campaign financing, the new union rules assure that, contrary to fundamental union democracy, realistic opportunities effectively to challenge top USWA officials will be rare indeed.

14. The continuing strong insurgent tendency in the Steelworkers union presumably indicates membership discontent, especially among basic steelworkers. While Mr. Kleiman quibbles over whether the administration *never* won a majority among basic steelworkers in any contested election, and whether McBride, as an exception in 1977, received a narrow majority among them, he does not dispute the existence of broad discontent among the one group of USWA members. No union leadership can be pleased by repeated challenge. Faced with widespread discontent and continuing insurgency, a democratically-minded union administration would attempt to remove the sources of discontent, reinforce membership rights in the union and on the job, and win over an overwhelming majority in democratic debate followed by fair and square elections. The Steelworkers officialdom has not succeeded

in establishing this kind of security for itself. Having failed to secure its position democratically, it now hopes to do so bureaucratically by rules that will favor incumbents in further elections. That, and that alone, explains its adoption of the "outsider" rule.

I have read the foregoing affidavit and believe the facts stated herein to be true and correct to the best of my knowledge and belief.

/s/ Herman Benson
HERMAN BENSON

SUPPLEMENTAL AFFIDAVIT OF EDWARD SADLOWSKI, JR.

Cook County
State of Illinois

Edward Sadlowski, Jr., being duly sworn voluntarily deposes and states as follows:

1. As a Plaintiff in this action, I have previously filed an Affidavit and reviewed the other affidavits and Declarations filed by the Plaintiffs as well as Defendant USWA.

2. Several observations are made in the USWA's papers regarding my 1976-77 campaign for the USWA Presidency and the campaign fund raising that my running mates and I engaged in. Specifically, it is asserted that I engaged in no in-plant solicitations of campaign contributions from members. (Kleiman, pp. 16-17). That simply is not true. Although most plant campaigning consisted of hand shaking and passing out literature, I did, in fact solicit contributions within plants in District 31 as well as other districts. Even in the larger plants, however, the sums raised by passing the hat or passing the bucket were seldom large enough to offset expenses in traveling to those plants in remote districts. In fact, I cannot recall ever collecting as much as $500 at any particular plant.

3. I am not aware of any in-plant solicitations which were conducted by or on behalf of the McBride slate during the 1976-77 election campaign, and the list of McBride campaign contributions disclosed to me and my campaign disclosed no such campaign contributions. Rather, as noted in my initial affidavit, McBride and his running mates relied almost exclusively on contributions from union staff and officers. In this respect, I note that several of the persons who have filed Declara-

tions purporting to be insurgent, anti-administration candidates, in fact, contributed substantial sums to the McBride campaign. According to the records of McBride's campaign, McBride received $1,000 from Frank Leseganich, $1,000 from Michael Mazuca, $200 from Frank Valenta and $4,000 from Joseph Odorcich, his running mate.

4. In addition to these contributions, Leseganich campaigned openly and extensively for the McBride slate. Similarly, McBride and Lynn Williams, another running mate, attended and participated in a fund raising dinner held by Frank Valenta in Cleveland which I read was attended by both USWA members and nonmembers.

5. I have carefully reviewed the affidavit of USWA General Counsel Kleiman. Mr. Kleiman purports to be a neutral observer of USWA politics and policies but the facts are that during the 1976-77 campaign, Mr. Kleiman withdrew from representing the Union in pre-election litigation because he wanted to be free to support the McBride slate. Attached hereto as Exhibit 1 is a memorandum I received from Mr. Kleiman and attachments. Exhibit 2 is a memorandum I sent to Mr. Kleiman.

6. After Mr. Kleiman withdrew from representing the Union, he was regularly observed at McBride campaign headquarters at the Pittsburgh Hilton. He was generally regarded within the USWA as a principal strategist for the McBride campaign and a close political advisor.

7. Mr. Kleiman states in his declaration that the 1976-77 election illustrates that the incumbent officers in the USWA do not have any advantages as a result of their control of the Union's newspaper, *Steel Labor*. He fails to mention that I filed a lawsuit alleging that *Steel Labor* was being used to aid McBride's campaign by attacking me and my supporters, and that after I testified an agree-

ment was reached which was approved by the Court which permitted my counsel to review issues of *Steel Labor* before they were published, to note objections and ultimately to bring any disputed matters to the Court's attention. A copy of the Agreement which I believe was later approved by the Court is appended hereto as Exhibit 3. Consequently, the only reason that *Steel Labor* coverage of the 1976-77 campaign was fair is because the lawsuit I filed neutralized it as an incumbent campaign tool.

8. Mr. Kleiman also suggests that my fund raising efforts among members were "at best sporadic" (Kleiman, p. 16) and he cites as support a quotation from an unnamed article. The quotation, while correct, does not support his conclusion. In fact, the entire article, entitled *James, Sadlowski And The Steelworkers: Notes for Next Time* published in the Spring 1977 edition of "Working Papers" (a copy of which is attached as Exhibit 4) makes clear that the reason my candidacy did not succeed was the overwhelming advantages enjoyed by the official family slate.

9. The article described in the foregoing paragraph vividly demonstrates the difficulties my running mates and I had in developing a campaign organization to offset the USWA staff which serves as the "official family's" campaign organization. It is extremely difficult to develop contacts in far-flung locations, and while the USWA Convention does afford some opportunity for contact with local delegates—an opportunity which we utilized—the delegates themselves are not a very good cross section of the Union's membership. In fact, a very substantial part of those in attendance; are paid staff and local officers beholden to the incumbent for high-paying committee assignments.

10. I note that Mr. Kleiman states that the persons he approached and convinced to serve on the Union's Campaign Contribution Administrative Committee were ap-

proved by the Union's Executive Board on September 25, 1979 and that my affidavit statement that the appointments were not made until January 1980 was "speculation". Mr. Kleiman does not dispute the authenticity of the USWA Press Release dated January 18, 1980 which announced the CCAC appointments. Though Mr. Kleiman may have known of those he selected in September, 1979, he does not deny that the appointments were not announced to the public until well after the lawsuit was filed. Nor were the CCAC appointees known within USWA prior to January, 1980. Indeed, USWA President McBride did not announce these selections until he sent a letter to USWA staff in mid-January. (A copy of that letter is attached as Exhibit 5).

11. In my earlier affidavit, I noted that of the few staff people who supported me that "several" "have been the victims of either overt or subtle political retribution." (¶ 12). I note that the Declarations submitted by USWA staffers confirm my statements regarding the changes which have occurred in the job duties, assignments, locations and status of each of the persons I mentioned, although political motivation is unsurprisingly denied in each instance. It might be possible for me to obtain affidavits from these persons regarding their circumstances, but they are already under enough pressure from the "official family" without my attempting to involve them further, particularly inasmuch as counsel advises me that these matters of political retaliation are not material to the issues in this case.

I have read the foregoing affidavit and I believe the facts stated herein are true and accurate to the best of my knowledge and belief.

/s/ Edward Sadlowski, Jr.
EDWARD SADLOWSKI, JR.

SADLOWSKI EXHIBIT 1

UNITED STEELWORKERS OF AMERICA
Five Gateway Center
Pittsburgh, Pennsylvania 15222

DATE December 3, 1976

TO: Lloyd McBride Edward Sadlowski
FROM: Bernard Kleiman, General Counsel
SUBJECT: International Election

Enclosed please find two self-explanatory memoranda which I have dispatched in connection with the International election campaign.

As these documents reflect, any inquiries you wish to address to Union counsel regarding the election campaign should be addressed to Mike Gottesman of Bredhoff, Cushman, Gottesman and Cohen and/or to James D. English.

BK:mk
Enc.

cc: I. W. Abel
Bredhoff, Cushman, Gottesman & Cohen
James D. English
Wayne G. Antrim

UNITED STEELWORKERS OF AMERICA
Five Gateway Center
Pittsburgh, Pennsylvania 15222

DATE December 3, 1976

TO: I. W. Abel John S. Johns
Walter J. Burke Leon R. Lynch

FROM: Bernard Kleiman, General Counsel

SUBJECT: International Election

One of the candidates for the presidency of the Union has addressed to me a formal request for action by the Union in connection with the election. This inquiry has reminded me that I should formalize by position concerning legal matters relating to the election campaign.

Although I am satisfied that it is not required by the LMRDA, I have determined that I will not advise the Union in connection with the conduct of the election or represent the Union in litigation relating to the election campaign. I have made this decision in order that I can exercise my right to support, assist and contribute to candidates of my choice on my own time and at my expense without creating any appearance of impropriety regarding the Union's legal operation. Accordingly, I have delegated such authority jointly to Bredhoff, Cushman, Gottesman & Cohen and James D. English. They have now functioned in this role for some time in a most impartial and effective manner, ad I am sure that they will continue to do so.

BK/jw

cc: Bredhoff, Cushman, Gottesman & Cohen
James D. English
Wayne G. Antrim

UNITED STEELWORKERS OF AMERICA
Five Gateway Center
Pittsburgh, Pennsylvania 15222

DATE December 3, 1976

AEL, CBF, RLM, SHB, DM AE DLG WHS

TO: All Members of the Legal Department

FROM: Bernard Kleiman, General Counsel

SUBJECT: International Election

This memoranda is intended to formalize my thoughts and understandings regarding the role of staff attorneys in connection with the forthcoming USWA election campaign.

Staff attorneys have a right to support the candidate or candidates of their choice, so long as they do not do so on work time or at Union expense. Of course, they also have a right to refrain from such activities. Such attorneys may, if they wish, make personal contributions to candidates, or work on behalf of candidates during their non-working time. Because the question of what is an attorney's "work time" is not easily definable, should you opt to work on behalf of a candidate you should be conscious at all times of your responsibility not to do so during hours which otherwise would have been spent performing legal services for the Union.

Although not required by the LMRDA, it is my view and the view of the Bredhoff firm that—as a matter of propriety—those lawyers who are advising the Union in connection with the conduct of the election and representing the Union in any litigation pertinent to the election campaign should refrain from partisan involvement in the election. To that end, all members of the Bredhoff firm, as well as Jim English, are scrupulously avoiding any involvement on behalf of any candidate, and they are pledged not to contribute to any candidate.

In this manner, we have preserved a corps of attorneys free of partisan involvement who can advise and represent the Union *qua* Union.

As you know, I have determined that I will not advise the Union in connection with the conduct of the election or represent the Union in litigation relating to the election campaign. Hence, all legal questions relating to the election should continue to be referred to Jim English and/or the Bredhoff firm.

BK/jw

CC: James D. English
Bredhoff, Cushman, Gottesman & Cohen

SADLOWSKI EXHIBIT 2

STEELWORKERS FIGHT BACK
9271 South Chicago Ave.
Chicago, Ill. 69617 312/721-0441

Memo to: Bernard Kleiman

From: Edward Sadlowski

Date: December 9, 1976

In response to your memorandum of December 3, 1976, I have one question, two comments and a challenge.

The question is: May I have a copy of the formal request for action by the union in connection with the election addressed to you by one of the candidates for president?

The comments are:

First, your decision to exercise your "right" to support, assist and contribute to my opponent only reinforces my belief that, in violation of section 401(g) of LMRDA, you have been supporting and assisting him all along.

Second, the delegation to Bredhoff, Cushman, Gottesman & Cohen and James D. English is ludicrous. In 1973 and 1974 they supported and assisted Mr. Evett and since then they have supported and assisted the Official Family in its support for Mr. McBride and its opposition to me —all in violation of section 401(g).

The challenge is: Name one time when you or the Bredhoff firm or English took a position before any tribunal in opposition to the position of the Official Family.

Please respond promptly.

SADLOWSKI EXHIBIT 3

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 76-1420

EDWARD. SADLOWSKI,
Plaintiff,

v.

UNITED STEELWORKERS OF AMERICA, *et al.*,
Defendants.

LLOYD MCBRIDE,
Plaintiff, Intervenor.

AGREEMENT WITH RESPECT TO COUNT I OF THE AMENDED COMPLAINT

This action was filed by the plaintiff, Edward Sadlowski, alleging in Count I that *Steel Labor* had been misused in violation of Sections 401(c), 401(g) and 501 of the LMRDA. Lloyd McBride intervened as an additional plaintiff, alleging that his rights under the LMRDA would be violated if Sadlowski were given relief which was not also afforded to McBride. The defendants denied that there had been any misuse of *Steel Labor*, or that any relief was owed to anyone.

At the close of the first day of the hearing, the Court invited a discussion with counsel for all parties in which the following transpired: The Court stated that it had not made up its mind how it would rule in the case, and that it would not begin to do so until it heard the second day of testimony. But the Court explained that it was primarily concerned with assuring that the forthcoming election not be vulnerable to a later post-election challenge by the loser based upon *Steel Labor*. The Court noted that irrespective of who prevailed in this lawsuit, the loser of

the election could still file a post-election challenge with the Department of Labor based upon *Steel Labor*. The Court inquired whether any basis could be found for the distribution of literature which would eliminate the possibility that the loser of the election could later challenge the election under Section 402 on the basis of *Steel Labor*.

After considerable discussion between the parties, they have arrived at an agreement satisfactory to all of them —an agreement which assures that the losing candidate cannot later challenge the election on the basis of *Steel Labor*. This agreement makes it unnecessary for the Court to resolve the issue raised in Count I of plaintiff's amended complaint, without decision on the underlying contentions of the parties.

The agreement set forth below will become effective when the Court signs the proposed order attached hereto.

1. Insofar as Count I of plaintiff's amended complaint alleged violations of Section 501 of the LMRDA, those allegations are withdrawn with prejudice.

2. Insofar as Count I of plaintiff's complaint alleged violations of Title IV of the LMRDA, those allegations are resolved—without the Court ever ruling on the matter—by the provisions set forth in the balance of this agreement.

3. In order to assure that there can be no post-election challenge based upon future issues of *Steel Labor* published between the date of this agreement and the date of the election (February 8, 1977), the following procedure is established: When the contents of *Steel Labor* for a given month have been determined, and before the newspaper is printed in final form, Messrs. Kushner, Greenfield and English (or their designees), representing, respectively, Sadlowski, McBride and the Union, will, following reasonable notice from Mr. English, meet in Mr. English's office to review the contents of the forthcoming

issue. If any participant believes that there is material proposed for publication in *Steel Labor* which might raise questions under Title IV, they will attempt to resolve the matter to their mutual satisfaction. If they are unable to reach complete agreement on the matter, they will notify the Court, which will arrange an in-chambers meeting with counsel at which the matter will be discussed. If the Court concludes that there are any questionable materials, it will provide such direction to counsel as will be necessary to assure that the issue of *Steel Labor* conforms to Title IV. Each month, Messrs. Kushner, Greenfield and English (or their designees) will sign a statement certifying that the issue of *Steel Labor*, in the form actually sent, fully complies with Title IV; provided that, if the Court has given direction to counsel as described in the preceding sentence, their signatures will be given when they are satisfied that such direction has been complied with. That statement shall be binding upon Sadlowski, McBride, and the Union.

4. The Union will make one mailing in accordance with the following schedule and procedures:

(a) On December 21, 1976, each Presidential candidate who has secured sufficient nominations to appear on the ballot, and who wishes the distribution described below, shall submit the proposed text of his literature to counsel for all parties hereto, and also to the Court in order that the Court can make the inspection to assure that the requirements specified in subparagraph (d) below are met;

(b) Each candidate's literature, when printed in final form, must not exceed one-half the maximum weight (but not exceeding four pages) which Cornelius Printing Company certifies will permit the mailing of both candidate's literature in a single envelope at the 2-cent bulk rate.

(c) The literature may discuss only the candidates for President, and not the candidates for any other office;

provided that if it develops that no candidates for the five top offices qualify for the ballot except the candidates on the Sadlowski and McBride slates, then the literature may discuss the candidates for the five top offices.

(d) The subject matter of the literature may encompass a discussion of substantive issues, and of the merits of the candidate and the demerits of his opponent. The literature shall not, however, contain any personal criticism of, or any personal attack upon, any officer or member of the Union other than the opposing candidate; nor shall it make any reference to this lawsuit. The Court will review the proposed texts of the literature on December 21, 1976 to assure that these requirements are met.

(e) Following the Court's approval of the proposed texts of the literature, the literature will be promptly delivered to Cornelius Printing Company in Indianapolis, Indiana.

(f) Cornelius will address a single envelope to each member of the Union, will insert the folded sheets received from the candidates into that envelope, will seal the envelope, and will mail same.

(g) Each candidate for President having requested that the Union, as a service to the membership, assume the cost of the preparation and distribution of the above-described literature, and the Union being agreeable thereto, the Union will assume the costs thereof; provided that the printing for each candidate will be uniform in style and cost, and that such costs will be reasonable in the circumstances.

5. Sadlowski and McBride each hereby acknowledge that the procedures specified in Paragraphs 3 and 4 above eliminate whatever contentions he might otherwise have had with respect to whether *Steel Labor* complies with Title IV of the LMRDA, and that neither he nor any of his supporters will file any post-election complaint with the

Secretary of Labor alleging that *Steel Labor* was misused at any time prior to the conduct of the election.[1]

6. Because Count I has been resolved without the parties finding out how the Court would have ruled, each side will bear its own costs and attorneys' fees with respect thereto; nor will any claim for reimbursement be filed under the "common benefit" doctrine or otherwise.

7. This agreement does not resolve Count II of the amended complaint and the parallel provisions of the intervening plaintiff's complaint.

[Names Omitted in Printing]

Approved as the Order of this Court and ordered filed.

United States District Judge

[1] The acknowledgment of Paragraph 5 shall also extend to the Keynote address at the 1976 Convention, independent of its reprinting in *Steel Labor*.

SADLOWSKI EXHIBIT 4

Sadlowski and the Steelworkers: Notes for Next Time

by Edgar James

Rolling Stone hailed him as an "old-fashioned hero of the new working class." The Byzantine chieftains of the American labor movement, less familiar with the class struggle, saw him in simpler terms: Ed Sadlowski, seeking the presidency of the 1.4-million member United Steelworkers of America, prefigured the Ottomans at the gates.

If Sadlowski could win the Steelworkers presidency on February 8, the largest industrial union in the AFL-CIO would move out of George Meany's old-line camp and into what so far had been a small coalition of progressive unions and labor leaders. With the emergence of leaders like William Winpisinger, new head of the million-member International Association of Machinists, and with the UAW under Leonard Woodcock's successor Douglas Fraser likely to reaffiliate with the AFL-CIO, the federation's left wing could get bigger fast. And not too far down the road, Meany would be retiring, as would eight of the 33 septuagenarians and octogenarians on the federation's executive council.

So the political stakes were high. And though columnists Evans and Novak may have overstated what they called a "coordinated left of center drive" to create "an ideological sea change" in organized labor, there is no doubt that reformers of many stripes were supporting Sadlowski.

Within the ranks of the Steelworkers, grievances against the union hierarchy had been mounting. Outgoing president I.W. Abel had recently negotiated the so-called Experimental Negotiating Agreement (ENA), a no-strike pact with the steel industry that locked the union into arbitration of unresolved bargaining disputes (box p. 34). Abel had promised a more open union when he was elected in 1965, but the ENA was announced in 1973 after years of top-secret talks with the companies. Minority workers were unhappy with the resolution of an employment discrimination case brought against steel companies and the union by the Justice Department; they viewed the settlement in the case as a weak compromise. And dues, always a sore spot, resurfaced as a union issue in 1974, when a rule change passed by the International convention caused some members' dues to rise significantly.

More generally, the union was beset with an ill-defined but pervasive institutional malaise. Monsignor Charles Owen Rice, a leader of the militantly anti-Communist Catholic inner circle when Phillip Murray was Steelworkers president, may have put it best. The union under Abel, he said, was not corrupt, but it was "soft, pompous, dull, a bit lazy, and distant from the membership."

Election challenges were not unknown in the Steelworkers union, but rank-and-file insurgencies (as opposed to palace-guard revolts) were rare and never successful. When Murray, the union's first president, died in 1952, secretary-treasurer David McDonald succeeded him. McDonald, a flamboyant figure with expensive tastes, was a man to hold on to his job. ("Now, let's be realistic, fellows," he once told a group of reporters. "Where the fuck would I get another job at $50,000 a year and all expenses?") In 1956, after forcing through an unpopular dues increase and attempting to strip the Canadians of their national director, he beat back a challenge by rank-and-filer Donald Rarick with a 65 percent showing, in an election that even union staff members admit was characterized by "massive irregularities."*

But McDonald toured the plants in a limousine with U.S. Steel president Benjamin Fairless, and in 1959 he led the union into a badly bungled 116-day basic steel strike. So in 1965 his secretary-treasurer, I.W. Abel, captured the presidency in a tumultuous campaign that was reported to have cost a million dollars. Abel had derided McDonald's "tuxedo unionism," and claimed his election was a victory for the rank and file. In truth it was more in the nature of a coup; Abel was supported by most of the union's high-ranking officials.

EDGAR JAMES spent five years working with the United Mine Workers, first in the reform movement known as Miners for Democracy and later as a senior staff member in the new administration. He managed Arnold Miller's successful campaign against W.A. "Tony" Boyle in 1972 and recently spent seven months as a coordinator of the Sadlowski campaign, which he left shortly before the election.

*There was no union election law in force at this time. The Landrum-Griffin act — officially called the Labor Management Reporting and Disclosure Act — which now regulates union elections was passed in 1959.

The second real insurgency came in 1969, when a relatively unknown staff attorney named Emil Narick garnered a surprising 41 percent of the vote against Abel. Narick carried the big locals in the industry's "basic steel" sector averaging 63 percent of that vote, despite a campaign of modest proportions.

Eight years later, Ed Sadlowski became the union's third insurgent candidate in three decades. Unlike the other two, he looked like a winner.

Thirteen years before, at age 25, Sadlowski had defeated a four-term incumbent to win the presidency of the huge local at U.S. Steel's South Chicago plant. Then in 1973 he ran for director of the 140,000-member Chicago-Gary district. Joe Germano had run this district virtually unopposed for 30 years. A long-time associate of the late Mayor Daley, Germano was part of the union's palace guard; he had managed I.W. Abel's successful campaign in 1965. When age forced him to retire as district director in 1973, Germano chose his administrative assistant, Sam Evett, to succeed him.

The lackluster Evett barely survived the first election against Sadlowski, despite the rather extensive vote fraud engineered on his behalf. When the Labor Department stepped in and called for a new election, Evett's campaign was taken over by the union's organizing director, Elmer Chatak. It was financed by Abel's newly created "Fund for Continued Leadership," into which officers and staff were requested to make $500 and $50 donations respec-



PHOTO BOB GUMPERT

tively. But all this made little difference. Sadlowski carried the district by a two-to-one margin in the closely supervised second election.

Sadlowski seemed like a natural candidate for the presidency — tough and charismatic, with a powerful personality and intellect. And if Narick in 1969 could do as well as 41 percent, many people thought that Sadlowski could win. As director of the union's largest district, he was a proven vote getter. He was also Polish, which enhanced his appeal with many ethnic groups, and his background was in basic steel, which alone accounts for over a third of the union's membership. He had already gained wide attention in the national media.

Abel, meanwhile, was retiring, and his badly fractured International Executive Board (IEB) had failed to agree on a single slate of "official" candidates. George Meany's ill health, together with credible rumors of his imminent retirement, meant that the 14-million-member AFL-CIO would be a less effective weapon in the union hierarchy's hands than it might have been.

But on February 8, election day, Sadlowski lost. In fact, he barely managed to better Narick's record. How could so much come to so little? Part of the answer lies in the failings of his campaign. But part also lies in the nature of union insurgency itself.

No-Strike Pact

The steel industry's Experimental Negotiating Agreement (ENA) requires binding arbitration of unsettled contract disputes and thereby precludes strikes or lockouts. ENA surfaced in 1973 after five years of top-secret union-company talks.

Union president I.W. Abel and general counsel Bernard Kleiman had originally floated the compulsory arbitration concept at an executive board meeting in 1967. At the time, they expressly conditioned any such agreement on acceptance by the union's policy bodies and membership. But when ENA took effect, there was no membership vote — just a few sweeteners like a $150-a-year bonus and a clause (as yet untested) reserving the right to strike over local working conditions.

The union leadership offered two reasons for the no-strike pact. One, ENA would stop the stockpiling and hedge buying that otherwise precedes contract negotiations, and thus reduce the boom-bust cycle of employment in the industry. Two, it would reduce the threat of competition from foreign steel.

Recent developments seem to undermine this rationale. *Business Week* noted last May that seasonal layoffs were rising, thanks to hedge buying by companies in anticipation of price increases. And according to the *Wall Street Journal*, "cheap imported steel ... is no longer considered a threat by carbon steel producers," even though in late summer the concern over imports again surfaced. The increased costs of energy and transportation, not ENA, were responsible for decreasing the impact of this competition.

Whatever ENA's effects, union members who oppose the agreement don't like the top-down, carrot-and-stick way it was promulgated. And some oppose it on ideological grounds, arguing that a union should not under any condition give up the right to strike.

Even those most opposed to ENA, however, concede that not many members are worried about it. Few understand the agreement in any detail; fewer still consider it an ideological issue. And no one wants a strike. ◘

Beginnings

"They can't beat us, Pa, 'cause we're the people." That may sound crazy to you, but I believe it.

—Sadlowski quoting Tom Joad in *The Grapes of Wrath*, as reported in the *New York Times Magazine*

Shortly after his election as district director, Sadlowski told a reporter that he had to pick his next battle carefully. Within 18 months, however, he had announced for president of the union.

The alternatives to running for president were uncomfortable: become part of what Abel called his "official family" or get squeezed out. When Sadlowski first entered his district director's office, he

found the files missing; later his staff was cut from 60 to 43, and Sam Evett was appointed "midwestern coordinator," a new job created by Abel. Sadlowski, meanwhile, wasn't looking for an olive branch any more than Abel was offering one. "I don't even want to be a bastard child in I.W. Abel's 'official family,'" he declared.

If a presidential bid seemed inevitable, there were those who believed that victory was too. "1969 plus Sadlowski" was the key idea, and Steelworkers Fight Back, the organization that grew out of his successful district director campaign, would be the vehicle. Both, unfortunately, were flawed from the start.

The 1969 election gave credence to the notion that an insurgent could win. The trouble was, nobody knew how well Narick's 41 percent would stand up. That election attracted only a 35 percent turnout, and the 180,000 members who voted against Abel might represent no more than a hard core of dissidents.

The union had changed considerably since 1969. Runaway shops and layoffs had cut deeply into the areas of Narick's strength, and the union had grown by roughly 30 percent in constituencies and localities where he fared poorly.

Then too, the 1969 election reflected issues peculiar to that year. A special "dues" convention in March 1968 had raised the per-capita contribution, and Abel announced an unimpressive steel settlement shortly thereafter. The union's staff had formed its own union, the Staffman's Organizing Committee, and was rife with anti-headquarters sentiment. Black activists were mad because they had supported Abel in 1965 and had little but stale promises to show for their support. Most important, the union hierarchy didn't take Narick seriously until late in the campaign. And 19 out of 24 district directors were facing challenges, which meant that directors were less concerned with Abel's problems than with their own re-election.*

But whatever the weaknesses of the 1969 premise, Sadlowski and his staff believed it. They also believed that a run for the presidency could simply replicate the informal structure and style of the 1973 district director campaign. This too led to trouble.

Shortly after Sadlowski was installed as district director in 1974, his supporters formed Steelworkers Fight Back (SFB). The name grew out of the candidate's slogan, "It's time to fight back," and SFB became the stalking horse for the expected presidential campaign. But by 1976 both the slogan and the name seemed out of joint with the times. Worse, SFB failed to boost the candidate's name recognition; preconvention leaflets went out only in the organization's name, not Sadlowski's.

SFB also set up a series of conceptual hoops through which prospective supporters were expected to jump. In the Steelworkers, opposition movements are traditionally baited as "dual unions." Already there were several organized left caucuses (the Rank and File Team, the Rank and File Caucus), and the ultraleft October League called all its branches "Fight Back." So SFB members had to explain who and what they were not before they could get to who they were.

The organization itself had a split personality, part movement and part campaign. That may sound like a theoretical division, but it caused internal friction over priorities. It also contributed to the campaign's major internal failing, an astonishing lack of organization. A reporter for the magazine *Focus/Midwest* quoted Sadlowski:

> We had few sophistications. That's what made us so good. But don't kid yourself about structural defects. Some guy said we were fucked up and chaotic like the Chinese Army. Another guy said, "They didn't do so bad."

"Sadlowski," the reporter notes, "brushes off implied criticism by asking why everyone has to be 'capitalist,' with a clear division of labor, hierarchy, and formal procedures."

By early July 1976, SFB had collected the names of only 800 potential supporters nationwide, and many were of no known importance. It wasn't until November

*John Herling's *The Right to Challenge: People and Power in the Steelworkers Union* (Harper & Row, 1972) is essential reading for anyone interested in the political history of the Steelworkers union. My analysis of the factors peculiar to the 1969 election is derived from this book and from conversations with Harold Picard, the staff representative who managed Narick's campaign.

that even a list of District 31 contacts was assembled.* When the campaign staff began to organize safaris into new territory, they made no effort to target dissident locals, and they concentrated on gathering signatures on petitions demanding rank-and-file contract ratification. But rank-and-file ratification was not an issue for the 60 percent of the membership who already voted on their contracts, and the signatures were clumped by the hundreds within a few large locals. An analysis of the contact file in October showed some 7,500 names, but only 300 out of 5,300 locals were represented, and half of these were covered by one person of unknown reliability. Many names had no addresses at all.

Yet if Sadlowski's start was shaky, the other side had problems of its own. The administration's candidate in the race was Lloyd McBride, director of the union district based in St. Louis. But McBride had not always been crown prince. He announced for the presidency late in 1975 with a slate that included Lynn Williams, director of 134,000 Canadian Steelworkers, and Frank McKee, director of the union's 11-state West Coast district. Abel's position on McBride's candidacy was unclear at this point, but 18 other members of the executive board formed a "unity caucus" and attempted to muscle McBride out of the race.

Within the caucus there were several pretenders to the throne. The most notable was Abel protégé John Johns, the union's vice-president, who eventually emerged with an eight-to-five vote of support and announced his slate. But caucus members equivocated, and Johns's vice-presidential running mate denied ever being on the ticket. In 1974 Johns had ineptly chaired the convention's discussion on the dues increase, and most observers decided he had now fumbled again.

By August 1976 Abel was faced with a seriously split IEB, including a rump of would-be candidates, and the expectation of an imminent announcement from Sadlowski. But when the convention opened that month, the *Wall Street Journal* headline read, "USW Leaders Open Convention Behind 'Official Family' Slate." Working behind the scenes, Abel had engineered a compromise. He increased the number of International offices from three to five. Johns was induced to announce his retirement, while Johns's candidate for secretary-treasurer joined up with McBride. A new position, vice-president for human affairs, was added to undercut the impact of an expected black candidate on Sadlowski's slate.

The McBride ticket was more compromise than inspiration, but Johns's one-time running mate soon died, allowing McBride to add district director Joe Odorich to his slate. Odorich, a Croatian from McKeesport, could be expected to make deep inroads into Sadlowski's ethnic support in southwestern Pennsylvania's steel centers. And though Leon Lynch, the human affairs candidate, was less impressive, McBride's slate ended up making geopolitical sense. The key was Canadian Lynn Williams. Canadians had begun to exert their political muscle in other international unions' elections, and a midsummer trip to previously anti-Williams locals in Ontario revealed near-unanimous support for Williams's election bid.*

Strategies

During the campaign itself McBride attacked and counter-attacked. Sadlowski, on the other hand, relied on the alchemic formula based on the so-called Narick premise: "1969 plus Sadlowski." Instead of identifying constituencies and issues, devising strategies and executing them, his campaign considered every move in terms of whether it would lose

*Sadlowski's national campaign, his campaign at the District 31 level, and the campaign of a pro-Sadlowski candidate for District 31 director were all run by the same staff. Depending on the priorities or crises at any given time, one campaign was likely to be cannibalizing another.

*"Anti-Williams" does not necessarily mean "insurgent." Williams's opponent in his last election (whom he defeated by a two-to-one margin) was a member of the more nationalist "Waffle" wing of Canada's New Democratic party, and support for him would not automatically translate into support for Sadlowski.

Sadlowski's slate, in any event, was more oriented toward basic steel than McBride's. Three of its members were staff people from the Pittsburgh-Youngstown steel centers, though one of them (Andy Kmec, who had been president of the staff union) had roots in eastern Pennsylvania and New Jersey. Oliver Montgomery, Sadlowski's human affairs candidate, was a veteran civil rights activist who had the endorsement of the influential Black Ad Hoc Committee.

Before the convention the headlines read, "USW Dissidents to 'Heat-Treat' Abel, No-Strike Policy." Now they read, "USW Cold Rolls Dissidents."

votes. When you think you're going to win, you don't take risks.

The August 1976 convention prefigured what was to come. Prior to the convention, rumors by the hundreds were filtering out of the union's Pittsburgh headquarters about Abel's plans to undercut Sadlowski, and Sadlowski's committee appointments were cut by half. So on the Sunday evening before it began, Sadlowski's staff invited interested delegates to an open meeting, where they announced that designated floor leaders would lead the strategy to counter Abel's moves.

In fact there were neither strategies nor floor leaders. When Abel launched his attack, he met no opposition. The headlines before the convention had read, "USW Dissidents to 'Heat Treat' Abel, No-Strike Policy"; now they read, "USW Cold Rolls Dissidents." The press in general viewed the convention as a major defeat for the would-be challenger, and at least one district director as well as many rank and filers slipped into the opposition camp.

The Sadlowski campaign consistently failed to develop solid positions on issues. Part of the reason was overconfidence, and part was an oversimplified reading of two presidential races — McGovern ran an issues campaign, Carter didn't. But whatever the reason, the result was that Sadlowski allowed McBride to outmaneuver him.

On one level, McBride proposed new bargaining objectives and union programs, thus distancing himself from Abel and running around Sadlowski's left end. Early on he announced that the contract's grievance procedure in discharge cases should be revised. No longer should a worker be fired and then reinstated only if he wins the grievance; instead he should be presumed innocent, and the company would first have to win the case in order to discharge him.

Even on the controversial ENA, McBride's position was faultless in purely political terms: "It's still on trial. We'll see how it performs." With as many as 280,000 steelworkers out of work (the union's figures are uncertain) — and with memories of the 116-day strike still lingering in the minds of older workers — it was easy for McBride to turn Sadlowski's anti-ENA position into irresponsible strike mongering. Sadlowski's image as a radical who would take the union back to the days of class warfare undoubtedly cost him votes among those over 35.

McBride buttressed his attack by quoting from a *Penthouse* interview with Sadlowski that appeared in the magazine's December issue. McBride quoted only the part in italics:

> Technology. With technology, the ultimate goal of organized labor is for no man to have to go down into the bowels of the earth to dig coal. No man will have to be subjected to the blast furnace. We have already benefitted from what our brains have produced technologically. *We have reduced labor forces from 530,000 fifteen years ago to 400,000 today. Let's reduce them to 100,000. The coal miners went from 400,000 to 63,000.*

Sadlowski went on to describe how the displaced would be reemployed. Few steelworkers read the interview; some who did found the magazine offensive.

According to most campaign observers in Pittsburgh, the *Penthouse* quote accounts for much of Sadlowski's lower-than-expected showing in the surrounding steel centers. Marvin Wanstock, candidate for vice-president of administration on the challenger's slate, commented at the time, "In Youngstown, we have strong Sadlowski supporters removing campaign cap stickers, because they think Ed's for higher unemployment."

While McBride was outdistancing Sadlowski on the issues, he was also going hard after the challenger's campaign itself. His charge was that all sorts of pink and red devils were behind the Sadlowski effort, from "limousine liberals" to the "Maoist-inspired Revolutionary Communist party." The charges gained little outside support; even Victor Reisel, a rabidly anti-Communist labor columnist, had said of Sadlowski, "There's not the slightest insinuation of Communist taint."

Nevertheless, red-baiting was effective in the South, and probably also hurt Sadlowski in northern steel centers. Anti-Communism is a powerful force in East European communities there, and organized

left groups such as the Communist party, Socialist Workers party, and Revolutionary Communist party all maintain enough profile to make the charge believable.*

In December McBride was nervously predicting that the election would be determined by 25,000 votes, and his pessimism fueled the already heady confidence of the Sadlowski campaign. Then, in Chicago on Christmas Eve, McBride launched his most effective attack: a press conference denouncing Sadlowski's "outside financing."

Hours before the press conference, McBride's lawyers had filed suit in Cook County Circuit Court. The suit alleged that Sadlowski had received employer contributions in violation of the *International Union Elections Manual*, and sought immediate disclosure of Sadlowski's records.

The term "employer" was so expansively construed in McBride's brief that anyone receiving corporate money as a stockholder or corporate representative (such as an attorney) fell within the definition. But McBride's local counsel, John Egan, was a former judge and Mayor Daley's unsuccessful candidate for state's attorney in Cook County. Before entertaining a Sadlowski motion to dismiss, the presiding judge granted discovery, meaning that — whatever the outcome might be — the records would have to be disclosed. And for the two weeks that the suit was pending, McBride kept the story alive by citing Sadlowski's legal maneuverings as an attempt to keep the source of his funds secret.

The prevailing wisdom at Sadlowski headquarters was to hunker down and weather the attack ("half the action is in the overreaction," the aphorism went), and the candidate's response — that McBride's charge was the "last gasp of a drowning man" — was not much for even a sympathetic reporter to hang a defense on. When Sadlowski, two weeks later, decided to counterattack and disclose his contributors list, his charges against McBride appeared to the press as disingenuous diversions. And when reporters noted that 80 percent of his contributions (which at the time totaled $150,000) came from outside the union instead of 80 percent from inside as his campaign had claimed, credibility went down the drain. From then on, Sadlowski's campaign maintained the defensive.*

In the end Sadlowski's campaign was out of sync: it appears to have peaked in the big basic steel locals in late December, about the time it was just moving into outlying areas. When the vote was counted, Sadlowski had just about broken even in the critical stretch between Chicago and the East Coast (which includes 64 percent of the membership). In the three Pittsburgh districts where Narick had won 67 percent of the vote, Sadlowski barely edged 50 percent. Even in his own District 31, he won only about 60 percent, down significantly from his district director vote in 1973.

McBride had focused on the North and the South, and his strategy was successful. In Canada, he buried Sadlowski with a 38,000-vote margin. District 5 — Quebec eastwards through Nova Scotia — reported McBride at 23,651 and Sadlowski at 2,668. In the South, the margin was also about 38,000 votes. So 88 percent of the 86,000-vote difference be-

*For months, the union tried to peddle a story to the press that it was investigating "Communist influence." They eventually found a taker: a *Pittsburgh Press* reporter wrote an editorial raising the specter of reds boring from within the ranks, which he speciously claimed was not an election-related story.

The union's organizing director also ordered hundreds of copies of the Socialist Workers' party pamphlet, *The Struggle for Union Democracy in Steel*. The copies were purchased with union money and were circulated to prove left support for Sadlowski's cause. Anyone interested in the issue as it developed around Pittsburgh should read Monsignor Charles Owen Rice's columns in the *Pittsburgh Catholic* for August 13, 1976, and November 26, 1976. They are an instructive bit of self-exorcism.

*The press's response to Sadlowski was always important, and his failure to articulate substantive positions on issues made otherwise sympathetic reporters wary. Once the "long on rhetoric, short on specific program" interpretation began (in *Newsweek*, May 10, 1976), it was hard to shake.

In general, the influence of the national media was immense in this campaign (unlike, for example, the 1973 district director campaign). Steelworkers may read the *McKeesport Messenger*, but reporters read the nationals, and a story is what the *New York Times* or the *Wall Street Journal* says is a story. (In this case, the *Pittsburgh Post-Gazette* and *Business Week* occupied similar positions because of the reporters involved.) It is a vertical version of what Timothy Crouse has called "pack journalism."

tween the two candidates came from Canada and the South.*

Sadlowski, as one reporter wrote, would have been "red baited, strike baited, and branded as a radical" regardless of his positions. But the campaign was rhetorically and symbolically left, without substantive positions to back up the rhetoric and symbols. Sadlowski attacked the ENA for "stripping the muscle out of collective bargaining." But he did not discuss its impact on imports, layoffs, or job security in general.

In a strange way, Sadlowski foretold his own defeat in the same *Penthouse* interview that cost him so much support. "Today," he said, "the economic situation dissipates a consciousness that needs to take root. The 'consciousness' now is just wanting to have a job."

Union democracy

> To challenge an entrenched union president [has] long been considered one of the more daring if not foolhardy exercises in union politics.
>
> — John Herling, *The Right to Challenge*

Whether Sadlowski could have won even with the best-managed issue-based campaign, however, is still an open question. The difficulties he faced in many ways reflect the ambiguous nature of union democracy itself.

Most union officials think democracy is fine until there's an outbreak of it in their union. Abel not long ago was touting the formal structure of democracy in his union while denouncing secret ballot elections and vigorously urging a labor fight to repeal the Landrum-Griffin act.

When a challenger proposes to test a union's democratic structure by trying to unseat an official candidate, he opposes not only a well-entrenched adversary but the full resources of the union itself. Unlike a candidate for public office, he doesn't have a political party to provide him with organization or support. He starts with nothing and faces everything.

By virtue of his status as the official family candidate, McBride commanded an intricate network of diverse forces. The union's staff provided him with a nationwide organization that included local-by-local contacts. Most of his money — 90 percent of the $182,000 he had received by early January — also came from the staff, with more than half of the union's 850 employees listed as contributors.

District offices served as distribution centers for McBride literature, despite the prohibitions of the Landrum-Griffin act. A chance visit to the Pittsburgh Hilton revealed a virtual who's who of union officials trundling back and forth between McBride's campaign office and the union headquarters a block away. In Sadlowski's own district, the midwestern public relations director shepherded reporters through a flock of underground anti-Sadlowski contacts. And the union frequently used its considerable public relations muscle to preempt Sadlowski press releases and contest his assertions about union policy.

The union also has limitless financing available for legal counsel to defend the organization's election policies — which usually means defending the interests of the official candidate. Lawyers are a necessity for both sides in a union campaign; legal attacks on the challenger can be crippling. But challengers have a hard time finding labor lawyers. They usually work for companies, in which case you don't want them, or for unions, in which case you can't get them.

Washington attorney Joseph Rauh — architect of the three-year legal strategy to oust W.A. "Tony" Boyle from the Mine Workers presidency in 1972 — was largely responsible for prompting the Labor Department's review of Sadlowski's district director election. He also worked in Sadlowski's presidential campaign, devising a litigation strategy to help shut off McBride's reliance on union resources. Sadlowski brought one suit, for example, to muzzle the union's monthly news-

*These election results are unofficial. They are based on McBride's count, which was reported to be very close to the official Teller's Report, still in preparation as this article went to press.

When the returns are all in, computer analysis of the local voting will be instructive. For example, district director preferences and the size of a local appear to be more significant than such economic factors as type of industry in Steelworkers elections. The "basic steel vote," long a key element of conventional analysis, may be far too facile a notion. See Bruce Bircnbaum's unpublished honors thesis, "Union Democracy in the Steelworkers Union" (Harvard University, 1977), and John Herling's *Right to Challenge*, Appendix 5, "The Voting Phenomenon by Size of Locals."

paper, *Steel Labor*, which had been running stories about outside interests in the campaign, Communist infiltration, and the like. In this case Sadlowski settled the case to his advantage, but he had to contest both with the union's staff attorneys and with its able Washington counsel.*

Political reprisals often cause legal entanglements. Shortly after Ignacio Rodriguez announced for secretary on Sadlowski's slate he was fired as acting president of his local. The local was already in "administratorship" — operation by the International — following a July 30 closing of the can plant, and Abel, in an irregular procedure, then ordered that the local be phased out entirely. Charter revocations like this supposedly require action by the union's executive board, and can be implemented only after pending grievances are resolved. Neither condition was met in this case. But here too Sadlowski's counsel managed to stop the reprisal. If it had not been stopped, Sadlowski would have had to find another running mate, and the campaign would have been crippled for weeks.

Firms doing business with a union offer official candidates another kind of support. The Washington labor public relations firm of Maurer, Fleischer, and Anderson, for example, provided two of its senior partners to supervise McBride's campaign. (Since helping out Abel in 1969, the firm had been on retainer to both the union and the Abel-controlled Industrial Unions Department of the AFL-CIO, though it temporarily severed its relationship with the union in October when conflict of interest questions arose.) The Pittsburgh Hilton, meanwhile, was asked about its financial arrangements with McBride, who maintained an expensive office on the ground floor. A hotel repre-

*Bernard Kleiman, the union's general counsel and a Germano contribution to the Abel administration, and Joseph Molony, Abel's retired secretary-treasurer, were instrumental in getting McBride and his two co-candidates to announce. Kleiman announced a policy during the campaign that union lawyers were free to campaign for any candidate on their own time. He himself may not have been so careful about campaigning on union time, but he did withdraw from election-related legal work because of his role as a McBride strategist.

United Steelworkers of America

In 1936 John L. Lewis, president of the United Mine Workers of America and the major force behind the CIO's push for industrial unionism, created the Steelworkers Organizing Committee with UMW vice-president Phillip Murray as chairman. Like the Mine Workers, the new Steelworkers union would choose its officers by referendum election — but though the first convention was in 1942, the first elections weren't held until three years later.

At present the union is divided into 25 districts, each with an elected director who sits on the International Executive Board. The International's officers include a president, two vice-presidents (as of August 1976), a secretary and a treasurer (the offices were separated in 1976), and a national director for Canada. All are elected every four years.

The union encompasses roughly 5,300 locals and 1.4 million members throughout Canada, the United States, and Puerto Rico. Locals vary in size from a few members to the 18,000-member local at Inland Steel in District 31. The 213 locals with more than a thousand members account for about two-fifths of the membership; the 3,882 with fewer than 250 represent only a quarter. Voting turnout tends to be higher and more lopsided (often in a conservative direction) in the smaller locals.

There are 18 separate "industry conferences" in the union, representing workers ranging from mushroom farmers to coke-oven employees. Only the "basic steel" conference represents a large percentage of the total (about 37.5 percent). But three others are significant economically and politically because they bargain on an industry-wide basis: containers, nonferrous metals (mostly mining and smelting), and aluminum.

Between 1970 and 1974 the union organized nearly 120,000 new workers; in addition, 15,000 Stoneworkers joined the ranks in 1971 and 170,000 members of District 50, formerly a Mine Workers affiliate, joined in 1972. So the union grew by 30 percent in five years, even while runaway shops and layoffs were cutting into other jurisdictions. ◻

Unlike a candidate for public office, a union challenger doesn't have a political party to provide organization or support. He starts with nothing and faces everything.

sentative declined to comment, saying only, "The Steelworkers union is our largest account." McBride's supporters complained loudly of the challenger's "outside support." But it was McBride's outside supporters, not Sadlowski's, who had a financial interest in the outcome of the campaign.

Finally, McBride had outside political supporters of his own: the Social Democrats USA, a small group active within the AFL-CIO. From this organization's ranks came Paul Feldman, editor of their paper *New America*, a man who as late as 1975 had written an article on Vietnam called "How the War Was Lost in Washington." Feldman was hired by the union's public relations department. His specialty was left baiting: with two other members of Abel's staff he prepared a broadside on "left domination" of Sadlowski's campaign for distribution at the convention under the imprint of a purported rank-and-file group called "Steelworkers Members Against a Radical Take-over" (SMART). Detroit attorney Bruce Miller, who orchestrated several of McBride's legal maneuvers and occasionally spoke for the campaign, was another contribution from the Social Democrats.

The inequality of resources between official candidate and challenger is magnified by the structural impediments placed in the insurgent's way. Nominations, for example, are usually determined by a handful of officers and members, and are heavily influenced by the staff's preferences. Insurgent candidates are denied information as to the date, time, or place of nomination meetings. In Sadlowski's 1973 District 31 campaign, just as in Joseph Yablonski's 1969 Mine Workers campaign, challengers repeatedly found clocks turned ahead, meetings canceled and reconvened privately, members notified selectively, and extensive campaigning by the staff.

This year a new requirement in the Steelworkers (the result of a consent agreement between the union and the Labor Department) prohibited a candidate from being nominated from the floor of a meeting alone. Instead, a local member who wanted to nominate a candidate had to send written notice to the local's financial secretary at least 48 hours before the meeting. Would-be candidates, of course, don't know the time of the meeting. And challengers aren't given a list of local financial secretaries; they get instead a list of recording secretaries, who have traditionally been instructed that requests for information from candidates do not have to be answered. In some places where Sadlowski's campaign was able to get nomination letters submitted, staff people had them withdrawn; one zealous staff representative at a District 31 local managed to get all five Sadlowski petitions recalled.

While a candidate can require the union to allow its mailing list to be used under supervision, access to the membership list is prohibited. In a campaign, that is an astonishing limitation. The Landrum-Griffin act provides that a candidate has the right — once, and within 30 days prior to the election — to examine a list of names and last-known addresses of members covered by a union agreement. In this situation, that is equivalent to a small room full of computer paper — and you can't take it with you. Moreover, a union lawyer warned the Sadlowski campaign not to make use of the contract listing issued by the union's research department. This listing is the only source of information on the size and location of locals.

Company involvement is also a problem for a challenger, though it is always subtle and on its face neutral. Rules that prevent campaigning on company property (without infringing on the union staff's regular right of access) and rules requiring the removal of campaign stickers are common. The company can also affect the turnout by denying or granting plant-site balloting when such a move would help its favored candidate. In a 1965 election for District 1 director, the pro-Abel challenger came within 517 votes of beating the pro-McDonald incumbent, thanks partly to a high turnout. But in New Hampshire, the sub-district director had induced three companies to deny plant-site balloting, thereby reducing the turnout. This move probably tipped the election toward the incumbent.

Statements from company officials are rarer. This time, however, J. Bruce Johnston, the chief industry negotiator and an architect with Abel of the no-strike agree-

ment, played Cassandra. Careful to castigate both candidates for "not discussing the issues," he went on to prophesy bleak times and breadlines should ENA be rejected — that is, should Sadlowski be elected.

Violence, always a fear in union elections, is rare in the Steelworkers. Nevertheless, several Sadlowski organizers were assaulted early in the campaign while leafletting at an Armco Tool plant. And only a day or two later Ben Corum, a Chicago Sadlowski worker, was nearly murdered at Houston's Hughes Tool plant. A group of unknown assailants shot him through the neck from their car and then sped away.

Fraud, though less egregious in the Steelworkers than in some unions, is nonetheless prevalent. Former president David McDonald advised a reporter from the *New York Times*, "I know how to run elections. I stole four elections for Joe Germano as director of District 31."

Stopping ballot fraud is difficult. To do so would require locating observers at every polling site — that is, at some 5,300 locals, many with several polling places and voting hours scheduled for two or three shifts. In practice, observers tend to be placed in locals where the candidate has some support, precisely the places where fraud is least likely to occur. In one southern district, Sadlowski won an average 45 percent of the vote in locals where observers were present and 17 percent where no observers were present. These numbers do not prove fraud. They do illustrate the value of observers.

In this campaign, Sadlowski twice requested a list of polling sites from each local union. Despite a court agreement that the union itself would provide the list within four days if the locals did not respond by January 15 (and only one-fourth of the locals did respond), Sadlowski didn't get the list until the eve of the election.

Sadlowski filed a challenge to the election within the ten days required by the union's constitution. When his remedies within the union are exhausted, he can ask the secretary of labor to investigate. If the secretary finds that violations "may have affected the outcome of the election," he can sue to have the election overturned.

Sadlowski has alleged multiple violations; the most important involve the staff and misuse of union resources. He also documents many instances of apparent overvoting in locals, mass distribution of ballots directly to members of pro-McBride locals by union staff, and other election-day violations. But the challenge is made difficult by the tight time requirements and by the large margin in the election.

Only the secretary of labor has legal standing to dispute union elections; Sadlowski can't sue by himself. But though in theory the secretary is the union member's lawyer, in practice he is an administration's liaison with organized labor. He is therefore dependent on good relations with union officials. Secretary Brennan resigned because he fell out of grace with Meany. Secretary Usery's performance at the Teamsters convention last summer was designed to curry favor with that union's leadership. Yet it is precisely officials like these whose improprieties the secretary is supposed to investigate when an election is contested.*

Whatever the outcome of Sadlowski's challenge, his last public statement was defiant. "We'll be back at the gates every day for the next four years."

Sadlowski's organization, Steelworkers Fight Back, is now holding small organizational meetings around the country. The group's future depends, however, on whether it organizes union members around issues. If it doesn't, it will represent no more than a holding action until the next campaign.

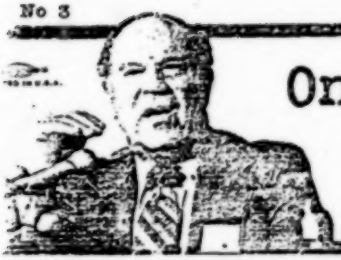
Sadlowski himself is a formidable political opponent. He is only 38, and will likely run again in four years. McBride, for his part, is not the black-hearted reactionary he was made out to be, and has shown some reform potential mixed in with his old-line politics. If he attempts to reach the young and disaffected among his members, he will undercut Sadlowski's strength.

If McBride fails to learn from recent history, though, the Ottomans will be back at the gates in 1981. Only this time they will be stronger and wiser. □

*When the secretary does indicate an intention to file suit, most unions settle out of court. This can lead to a trade-off of investigations, if several are pending, or weak provisions for a rerun election.

SADLOWSKI EXHIBIT 5

No 3 January, 1980



On the line . . .

AN OCCASIONAL LETTER FROM USWA PRESIDENT LLOYD McBRIDE FOR INTERNATIONAL UNION STAFF MEMBERS

Contribution Committee: Wirtz, Springer, Lewis

Last year, delegates to our 19th Constitutional Convention took a significant step to ensure that the affairs of their International Union would be conducted by the members, and not by those outside our ranks. They established a Campaign Contribution Administrative Committee and authorized your International Executive Board to select three people to serve on the committee.

The Board has approved three distinguished lawyers from outside the union to help protect the rights of our members in the election referendum for International officers and district directors, free from outside interference.

The three are Willard Wirtz, who will serve as chairman of the Campaign Contribution Administrative Committee; and Eric W. Springer and David Lewis, who will serve as members of that body.

The three lawyers who will enforce these rules are not only distinguished but exceptionally experienced in the field of labor relations.

Chairman Wirtz served as United States Secretary of Labor from 1962 to 1969 in the cabinets of Presidents Kennedy and Johnson. A Harvard Law School graduate, Wirtz is now a Washington attorney—a partner in the firm of Wirtz and Lopointe. His long experience includes service as general counsel of the War Labor Board during World War II and as chairman of the National Wage Stabilization Board after the war, among many other activities.

Previously a teacher of law at the University of Iowa and at Northwestern University, Wirtz is widely experienced in arbitration. He is chairman of the board of the National Manpower Institute.

Commission member Springer is a graduate of the New York University School of Law and is presently a practicing attorney in Pittsburgh. For many years, his specialty has been health and hospital law and he is a widely-known expert in the health care field. Springer has taught courses in hospital administration, serves as an adjunct professor of hospital law at the University of Pittsburgh and has authored numerous articles concerning the role of the law in connection with health care.

In addition, he served as chairman of the City of Pittsburgh's Human Relations Commission at a time when that body was active in enforcing the city's ordinance banning discrimination in housing, employment and in places of public accommodation. He also served as director of compliance of the U. S. Equal Employment Opportunity Commission.

The third member of the panel, David Lewis, is a long-time distinguished Canadian and former Rhodes Scholar who served many years as a member of Canada's Parliament. For a number of years, Lewis' law practice centered on labor relations, as counsel for various unions.

(continued on page 4)

The end of the year brought a flurry of newspaper editorials and columnists decrying "high excessive wages" in the steel industry while ignoring some of the real problems that are present. Here is one response we had in the Washington Post on Dec. 29:

Steelworkers' Lament

The Post's Dec. 3 editorial, "The Steelmaker's Lament," needs a response. It's a better written than ordinary editorial, based as it is on a couple of false assumptions.

First, it assumptes that steelworkers are paid too much [illegible] examination. It's true that rates of pay in the mills have gone up substantially over the past decade. But 37.3 percent of the higher wages resulted from cost-of-living increases—increases generated largely by the costs of fuel, food, medical care and housing. When The Post complains about the rates of pay in the steel industry, it suggests that the union should have avoided negotiating cost-of-living adjustments on the one hand and productivity increases on the other. Today, the average rate of pay in the mill is $8.96 per hour, hardly too high for the average family [illegible].

The second erroneous assumption is that this nation's steel industry competes in a world of private markets free of [illegible] nationalization.

Today, with new and expert-invested steel industries in Japan and the European Economic Community nations, our industry competes with steel selling for less here than it does in the country of origin. This "two-order" kind of marketing is supported by government and [illegible] subsidies. The bargain prices do not persist once a market has been sufficiently penetrated.

For the Japanese and Europeans nations, a primary objective of industry is to provide full employment—a social goal as much as a commercial one. Those nations put their people first. They [illegible] imports with various trade barriers. Profit is a particular industry is not as important as a gross [illegible] the overall performance of the entire economy.

Over here, the problems is not good wages in the steel or other industries. It's the failure of our traders. Time and large, to recognize that these trading partners overseas are governments in [illegible] other trading strategies are dictated by long-range political and social considerations.

I'm afraid our [illegible] will greatly increase before this reality is generally perceived.

LLOYD McBRIDE,
President,
United Steelworkers of America.

Pittsburgh

New appointments in six departments

There have been several significant personnel changes and appointments in the International Union in recent weeks, and I feel that you should know about them and the caliber of people who are providing some expertise in various sectors of the union's work. While seven people are involved in these appointments, it should be noted that most reflect recent retirements from comparable positions within their departments.

Two positions fill roles that had been held for several years on different occasions by Dean Clowes, who many of you know joined the Administration as under secretary of labor for international affairs last month. Dean had a 26-year career with the Steelworkers, having served as director of the USWA Political Action Department since 1962 and as head of its Older and Retired Workers Department since 1976. As director of the Labor Department's Bureau of International Labor Affairs, he is responsible for all international activities of the department. Dean began his career as a representative for the former CIO in Atlanta in 1948-49. He was labor adviser to the Marshall Plan in Washington and in Paris and Rome from 1943 to 1953 and joined the Steelworkers as a staff representative in Canton, Ohio in 1953.

Jack Sheehan is now an assistant to President Lloyd McBride. His assignments in Washington now go well beyond his directorship of the Legislative Department. Recently Jack assumed responsibilities as a member of the Steel Tripartite Committee, an advisory group comprised of Steelworkers, representatives of the steel industry and co-chaired by the U.S. Department of Labor and the U.S. Department of Commerce.

In addition, Jack joins me as one of two labor members of the American delegation to OECD, Steel Committee. Jack is in the process of helping establish a working group on the OECD Advisory Committee to work with the U. S. trade representative. These assignments involve the United Steelworkers in preserving jobs in the American steel industry and in trade relations with foreign nations.

In 1967, President I. W. Abel named Jack director of the Legislative Department. Over the next decade, under his direction, the department won wide acclaim as one of labor's most effective lobbying groups. Jack put together a vigorous and extensive lobbying effort in support of the Occupational Safety and Health Act (OSHA) and the Employe Retirement Income Security Act (ERISA), two major pieces of beneficial legislation.

International Affairs

Assuming duties as director of the International Affairs Department is Frank Lunney. Over the years, Frank made hundreds of friends among leaders of foreign labor unions. As a member of the Wage Department, Frank assisted

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the Department of Labor and sometimes the Department of State in teaching foreign labor leaders the ins and outs of contract negotiations, especially the evaluation and classification of jobs.

After World War II service while working at a refinery, he attended New York University in New York City earning both a BA and an MA in economics. In 1953 Phil Murray appointed him staff representative in District 7 where he worked on technical problems. In 1957 he was assigned to the Wage Department in Pittsburgh. At this point he began his long association with foreign labor. He visited Japan in 1962 and again in 1963 under the auspices of the State Department to assist Japanese trade unionists. He subsequently worked with European and South American union leaders.

Political Action / Oldtimers

A man with a strong background in political action and a variety of local union responsibilities, Ernie Post, has been named director of the USWA Older & Retired Workers Department and also the Political Action Department.

A native of Anaconda, Mont., Post worked at the Anaconda Co. smelter in that western city and was active in the Steelworkers organizing committee which secured recognition for the USWA at that facility in 1962--a recognition that helped advance Steelworker interests in copper prior to the 1967 merger with the Mine, Mill & Smelter Workers Union.

During his tenure there, Ernie served in a variety of positions within the local, including chairman of the grievance committee, shop steward, strike trustee and negotiator. He became State COPE Director of the Montana AFL-CIO in August, 1969, and held that position until February, 1978, when he joined the USWA staff in Washington, where he has been engaged in political action work.

In three other departments at the International Union, new personnel appointments reflecting retirements and resignations in 1979 (Bernie Greenberg, Maurice Schulte, Robert Hayden and Dian Altimore) have been made:

Pension & Insurance

In the Pension, Insurance and SUB Department Judith Ann Flora becomes a staff representative. She comes from the American Federation of State, County and Municipal Employes at Madison, Wis., where she was a researchar. Her duties include evaluating wage and benefit analysis for arbitration and negotiations. She helped organize the research materials and library for the Wisconsin Council of County and Municipal Employes. Before working for AFSCME she was a research assistant at the Industrial Relations Research Institute at the University of Wisconsin. Prior to that she worked for the U.S. Department of Labor as an industrial relations specialist.

Membership services get new staffpeople

Ms. Flora served as a representative for the AFT at the University of Wisconsin, was a delegate for the Madison Federation of Labor, and was a steward for the American Federation of Government Employes. She was a member of the AFGE executive board. She has a BA from Cornell University and an MA in industrial relations from the University of Wisconsin.

I have also named Jean Kolb as a staff representative in Pension & Insurance Department. Shortly after finishing high school, he joined the U.S. Marines. For two years he commanded a combat platoon in Vietnam. After leaving the Marines in 1967, he attended college, earning degrees at the Community College of Philadelphia and the Wharton School of Finance and Commerce at the University of Pennsylvania. He has graduate degrees from both the Wharton School and Southern Illinois University. He studied at the George Meany Labor Studies Center in Washington, D.C. and at the labor school at the University of Wisconsin.

He worked for the IUE as a research analyst becoming the associate director of the collective bargaining department before coming to the USWA in December.

Legislative

Dave Mallino brings credentials for his new job in the Steelworkers Legislative Department in Washington, D.C. and his association with the USWA is one of long standing. He left the Department of Labor to come to the union this month. He was the executive secretary of the Steel Tripartite Committee, an advisory committee on steel chaired by the Secretary of Labor and the Secretary of Commerce. Before working for the Labor Department, Dave was a staff assistant for Congressman John Dent and a research assistant for the House Committee on Education and Labor.

While in college, he worked summers in the Monessen Works of Pittsburgh Steel. He has a BA in political science from Penn State, an MA in international relations from the University of Maryland and is winding up work on a PhD in government and politics from the University of Maryland.

New Members

Leaving servicing and organizing assignments in Louisiana to assume new responsibilities in the New Members Department is James T. Matheny. He was representative for USWA local unions at Kaiser Aluminum, Murphy Oil and Amax Nickel in the Chalmette area. As an organizer, he helped in the campaign that put each of these locals into the Steelworkers.

He joined the District 50 staff in 1967, serving as an organizer in Louisiana, Mississippi, Georgia and Florida. After the merger of District 50 and the USWA, he drew the servicing assignment at Local 13000 whose members work at the huge aluminum plant at Chalmette. While working with Local 13000, he helped put together the union new member orientation program at the Kaiser plant several years before the Union began negotiating such programs. He was a member of the USWA negotiating committee in national negotiations with Kaiser Aluminum in 1974 and 1977.

Let Congress know how we feel about OSHA

Local 8822 member Sharon Groff was 19 years old when she was killed last August 30—the victim of a broken neck sustained when her hair got entangled in the shaft of a labeling machine she was cleaning at the M.A. Gerett Division of Western Industries, in Menomenee Falls, Wis. The machine the next day was cited for exposure of parts of the horizontal shafting during an OSHA inspection that was to find a total of 11 safety violations for which $4,900 in penalties was assessed.

And last month six of our members were killed at the blast furnace department of the Indiana Harbor Works of Jones & Laughlin, where preliminary investigations make us believe that this accident too could have been avoided. What makes these tragedies especially outrageous now is that there is a move in Congress to emasculate further the Occupational Safety and Health Act which we fought so hard for a decade ago.

The USWA is totally committed to the defense of OSHA, which has been subjected to continuing attacks that has kept its enforcement agency underfinanced and understaffed. We will vigorously oppose the most recent assault on OSHA—the proposal of Senators Schweiker (R-Pa.), Williams (D-N.J.), Cranston (D-Calif.), Church (D-Idaho), Nelson (D-Wis.), and Hatch (R-Utah), which would exclude over 90 per cent of the nation's workplaces from inspections under a vastly suspect procedure whereby an employer reports and testifies to his own plant's "safety".

Last summer we warned that restrictions on the OSHA and MSHA programs were contained in the appropriations and adopted by Congress for fiscal year 1980. The errant shots that have been fired at OSHA every year since its enactment increases their potency, and real erosion is beginning to take place. Let your Senators and representatives know how we feel about this assault!

Getting ready for the big table in '80

The 1980 calendar of activities is firming up fast now with some of the preliminaries out of the way. Both the Wage Policy Committee meeting and the Basic Steel Industry Conference are behind us and both were highly successful. It is clear that our basic steel negotiating committees are going to be well informed and closely united.

Local union negotiations are under way at the mills. At this writing, it is too early to gauge the extent of local union issues that may be outstanding as company-level negotiations approach.

The next big date is steel sound-off in Pittsburgh on February 5 and 6. At sound-off, all committees will meet with industry spokesmen with each side expressing its concerns and goals. Next significant date after that is April 15. That's the last day for submission of local issues at the plant level.

The International service departments are busy getting ready for company-level negotiations. Part of the preparatory work involves establishing cost estimates in connection with benefit proposals. And such proposals are being formulated in conformity with the Steel Industry Policy Statement.

Our negotiations involve the largest group of organized workers in the U.S. who will be bargaining in 1980. Altogether, just in the basic steel industry, 387,400 members are employed by the nine steel companies who will be bargaining with us in Pittsburgh. About 100,000 more steel industry employes will benefit from the basic steel settlement. In addition, approximately 120,000 Steelworkers in the aluminum and nonferrous industries will pattern their bargaining along the wage policy lines followed in steel.

Current agreements expire Aug. 1, 1980 for those employed in these nine basic steel companies, which bargain on an industry-wide basis through the Steel Companies Coordinating Committee (SCCC). Negotiations in 1980 between the USWA and the steel companies in SCCC will be conducted under terms of the Experimental Negotiating Agreement of 1980 (ENA-80).

ENA-80 eliminates the possibility of a nationwide strike or lockout, substituting voluntary arbitration in the event the industry and the union are unable to reach an agreement through the collective bargaining process. Under ENA-80, local unions may be authorized to strike over a broad range of local issues.

'Labor Never Quits, Never Gives Up'—George Meany

In a final editorial in the Federationist before his death January 10, George Meany spelled out what organized labor would be doing in the 1980s. With his usual directness, he could not be misunderstood.

"As long as people work for a living, they will form unions," he said. "And as long as workers are subject to employers whose sole motivation is profit or personal aggrandizement, workers will continue to build stronger and more effective trade unions to protect and advance their collective interests.

"The principles that guide us have always guided us, but they form a living, changing testament. Many of the goals we seek today are goals we have sought every day of the last quarter century. We have not achieved either tax justice or national health insurance, but we have not and we never will stop trying. And that is a demonstration of the final, enduring strength of the American labor movement.

"Labor never quits. We never give up the fight—no matter how tough the odds, no matter how long it takes."

Well said. Good words to keep in mind as we begin the 80s.

Contribution Committee: Wirtz, Springer, Lewis

(continued from page 1)

Later, he held a number of high positions—including national president—of Canada's Co-Operative Commonwealth Federation (CCF) and was one of the founders of that nation's New Democratic Party in 1961.

From 1962 until 1971, Lewis was deputy leader of his party in Parliament, and in 1971 he was elected federal leader of the NDP, a post he held until he resigned in 1975. Most recently, he has been a professor with the Institute of Canadian Studies at Carleton University in Ottawa.

The committee is being established under a mandate from delegates meeting in Atlantic City who adopted by a wide margin a new union constitutional provision banning the use of money and other support from outside the union in the election of its top officers and directors.

The provision and implementing regulations barred the solicitation and acceptance of non-member donations and support, and established rules governing the conduct of candidates for office regardless of the solicitation and acceptance of aid. The Campaign Contribution Administrative Committee will monitor campaign expenses and contributions, as well as enforce the rules adopted by the delegates.

On the line/Page 4

SUPPLEMENTAL AFFIDAVIT OF CLYDE W. SUMMERS

City of Philadelphia
Commonwealth of Pennsylvania

I, Clyde W. Summers, being duly sworn, voluntarily deposes and states as follows:

1. I have previously filed an affidavit in this action describing my background and the conclusions I reached regarding the rule adopted by the United Steelworkers of America banning candidates for office from accepting assistance and contributions from nonmembers.

2. In connection with this case, I have also read the Affidavits and Declarations submitted by others.

3. I have carefully reviewed the Declaration submitted by Bernard Kleiman, USWA General Counsel. I note that Mr. Kleiman does not question my background, credentials, and knowledge regarding union elections and union democracy. Rather, he states that my observations regarding the benefits of incumbency in union elections, while perhaps accurate as to other unions, are not applicable to the USWA. (Kleiman Declaration, pp. 11-15). Mr. Kleiman is simply wrong as both a matter of historical fact and as the record in this case discloses.

4. Despite the length of my initial affidavit (22 pages) the only conclusions which Mr. Kleiman says are not applicable to the USWA are my description of the four crucial advantages that incumbents enjoy in union elections described in paragraph 10 of my earlier affidavit. There, I noted in detail that incumbents enjoy "marked advantages at four crucial points:"

> 1. "[They] have control of the paid staff of representatives or business agents who provide the backbone of the incumbents' political organization."

2. "[They] have control of the union newspaper."

3. "[They] have ready access to the members."

4. "[They] have access to legal services at the union's expense."

5. Contrary to Mr. Kleiman's assertions that "incumbents" in USWA enjoy none of these advantages," are the facts recited in the affidavits on file. Neither Mr. Kleiman nor the USWA has contested any of the following factual statements:

Edward Sadlowski, Jr.:

"3. In 1973, when I initially ran for the District Director of USWA District 31 against the 'official family' candidate, Sam Evett, I was a member of the USWA Staff in District 31. At that time, there were approximately 60 members of the staff assigned to District 31; of this number, only one member ot the staff supported my candidacy. The balance of the staff in District 31 actively supported the election campaign of Sam Evett.

* * *

7. During my campaign for the USWA Presidency, three of my four running mates, namely Marvin Weinstock, Andy Kmec and Oliver Montgomery were all members of the USWA staff. Despite this fact, our slate received virtually no financial or other support from among the USWA's appointed staff and employees. At best, no more than 3 percent of the nearly 1500 employees and staff of the USWA supported our candidacies. In several districts, the staff unanimously contributed to the McBride campaign and unanimously opposed our candidacies.

8. During the course of the 1976-77 election campaign, as a result of litigation between our campaign and the McBride campaign, both candidates had the opportunity to inspect the list of campaign contributors to the other's campaign. As a result of reviewing the contributions made to the McBride campaign, my campaign staff informed me that approximately 90 percent of all of McBride's campaign receipts came from the Officers and USWA Staff. In most instances, the contributions made by staff members were uniform, for example, $500 per person. In other instances, payments to the McBride campaign by staff were made on an installment plan. According to the information we reviewed regarding McBride's campaign receipts, the USWA's officers and more than one-third of the USWA's appointed staff had contributed more than $160,000 to McBride's campaign as of one month before the election which was held in February, 1977.

9. By contrast, even though I was an elected officer and three of my running mates were staff members, we received less than $5,000 in contributions from staff. Of this amount, my recollection is that Pat Coyne, an employee in the USWA's Headquarters contributed $1,000 the largest amount."

James Balanoff:

"5. Because of the International President's power to appoint and remove staff and his unlimited discretion to appoint only those staff persons who are loyal to him and the 'official family,' the USWA is a union which is run from the top down. District Directors ordinarily rely upon staff support to first get elected and thereafter to remain in office. As a result, most District Directors quickly fall into line and adopt and never question the policies announced by the union's International President. At present, there are only two District Directors throughout all of the

USWA—Linus Wampler and I—who have not fallen into line behind President McBride and the 'official family'.

* * *

7. The paid staff of the USWA are (almost without exception) the political foot soldiers of the 'official family'. The power and political muscle of the staff is all pervasive within the USWA. There are several indisputable and obvious ways that their influence is exercised and felt. First, the appointed staff is a ready-made campaign organization, strategically located throughout the United States and Canada with close personal ties in virtually every local union. Secondly, the staff in the past has provided the principal source of campaign financing for 'official family' candidates. Third, the staff has enormous power and influence at the USWA's Biennial Conventions. Analyses of the delegate credentials held by appointed USWA staff at the most recent USWA Conventions which has been performed under my direction, shows that between 20 to 25 percent of the delegates attending are USWA staff members. Because I cannot recall the last time a roll call vote was held at a USWA Convention, the staff has voted at Conventions in proportion to the number of delegates who attended during voice or standing votes. Appointed staff are also designated to serve on various Convention Committees where they, along with members of the 'official family' and friendly local officers appointed by the President, assure control of the Convention Committees by the 'official family'. Finally, the staff can and does influence the Convention by circulating and soliciting resolutions proposed by the 'official family' among various locals prior to the Convention."

Robert Hauptman:

"1. During late 1976 and early 1977 I worked in the union election campaign of Edward Sadlowski, Jr. for the Presidency of the United Steelworkers of America.

2. During that campaign, Lloyd McBride instituted a lawsuit against Mr. Sadlowski entitled *McBride* v. *Sadlowski*, (Cook Cty. Circuit Court No. 76-CH-7669).

3. As a result of that suit, both candidates disclosed their contribution lists to their election opponents.

4. I reviewed the list of campaign contributions provided by the McBride campaign and compared that list with the list of Officers and Staff of the United Steelworkers of America which was appended to the then most recent Annual LM-2 Report filed by the USWA with the United States Department of Labor.

5. Based upon my analysis, I concluded that approximately 90% of the contributions the McBride campaign admitted receiving came from the Officers and Staff of the USWA.

6. Approximately one-third of the USWA's Officers and Staff contributed to McBride's campaign. By far, the largest amounts received by McBride came from USWA Officers and Staff. Thus, most of the USWA's District Directors contributed at least $1,000 to the McBride campaign. The staff members who made 'contributions' ordinarily paid $500 each. (Attachment A). In some USWA Districts, every single staff member contributed an identical amount. Sometimes the payments to the McBride campaign were made in 'installments'. (Attachment B and C)."

In my view, the foregoing facts demonstrate conclusively that the staff in USWA, perhaps more so than

other unions, constitutes both a ready-made campaign organization and provides direct and principal access to the membership.

6. Mr. Kleiman's assertion that control of USWA's newspaper is not an advantage for the incumbent is based on two factors:

> (1) That the newspaper does not carry any stories describing the candidacy of those seeking USWA office;
>
> (2) That coverage of "hard" news is not slanted. He cites the period prior to the 1977 McBride-Sadlowski election as proof for the second factor.

First, the refusal of union newspapers to carry declarations of candidacies or election disputes, decidedly favors the incumbents. The pictures, statements and deeds of incumbents are regularly reported upon and almost always favorably so during the period between elections. Thus, when the newspaper declines to print *any* campaign announcements, that determination deprives insurgents of the opportunity to place their names and programs before the electorate. Because incumbents ordinarily "run on their records", which the newspaper has already reported, this policy, while facially neutral, impacts far less on incumbents than on challengers.

Second, the 1977 McBride-Sadlowski campaign does not support Mr. Kleiman's position. Rather, he fails to mention that Sadlowski successfully sued and obtained a consent Order neutralizing *Steel Labor*, the USWA monthly newspaper during the pre-election period and that, as a consequence of that order, Sadlowski was permitted to review and object to articles or stores that were partisan and that he did so.

7. With respect to the incumbents' advantage of utilizing union counsel, the record in the USWA is no different than any other union. If anything, the access of

incumbents to union counsel may be more pronounced in the USWA because of the significant amount of post-election litigation.

Incumbent officers set union policy, and union lawyers implement or defend those policies in litigation. This process is no different in the USWA than in other unions. Thus, when USWA district director candidates challenged incumbents within USWA and lost their claims before the Union's Executive Board, union lawyers represented the interests of the incumbents in the subsequent Department of Labor investigations and suits brought by the Department to overturn those elections. This was true both in Odorcich's challenge as well as Sadlowski's. In three cases where suit was brought by the insurgent against the Department of Labor—Bachowski and Valenta following the 1973 elections and by the Sadlowski slate in 1977—the USWA intervened in all three, as a defendant; and, while protecting the integrity of the union's processes, also protected the interests of the incumbents. Indeed, the very process described by Mr. Kleiman regarding his role as the Union's General Counsel in drafting the "outsider" rule highlights the benefits that incumbents in the USWA enjoy.

8. The recent history of USWA elections does not support Mr. Kleiman's argument that many incumbents have been successfully challenged. Rather, in the past quarter century, no one without majority backing from the USWA Executive Board has ever succeeded in winning one of the three (now five) International offices.

9. Similarly, very few challengers of incumbents have succeeded in winning District Director elections. The USWA published a pamphlet in 1975 to which it appended a table of elections which had been contested since the late 1940's. A copy of that table is appended hereto as Exhibit A. Over the period covered by this table, 1949-75, there were approximately 25 USWA Districts. Exhibit A shows that in most USWA elections, the over-

whelming majority of District Directors were not even challenged. Thus, only 2 of the 25 director elections were even contested in 1957, and only 4 were contested in 1961. In the 3 elections where an incumbent was challenged in 1961, the incumbent was re-elected. Four years later, in 1965, when Abel, with a majority of the Board supporting him successfully challenged David McDonald, only five incumbents were challenged, but all were re-elected. (These elections are described in detail in Herling, *Right to Challenge* (1972)).

10. In 1969, only 11 of the 24 District Directors were challenged. Eight of these elections involved incumbents, five were re-elected, two were defeated and one election in which the incumbent was defeated was set aside by the USWA "because of irregularities."

11. In 1973, 14 incumbent directors were not even challenged. In the seven contested elections involving incumbents, USWA ruled that all had been re-elected. In the remaining four elections, USWA ruled that administration-backed candidates won three and lost one. Three of the eleven contested elections ended up in litigation. The election in District 31 was set aside after the Department of Labor filed suit, while losing candidates Bachowski and Valenta challenged the Department of Labor's refusal to sue in two other cases.

12. In 1977, 10 of the incumbent USWA directors were not even challenged. (Attached as Exhibit B is a copy of USWA's Official Results of the 1977 elections). Bachowski (on his third try) and Valenta (in his second effort) were successful, but only Valenta defeated an incumbent. Neither ran on anti-administration platforms. Valenta, in fact, contributed to McBride's campaign (Sadlowski Supplemental Affidavit, ¶ 3). Only two candidates which ran on anti-administration platforms were elected, Balanoff and Wampler (Balanoff Affidavit, ¶ 2; Samargia Affidavit, ¶ 6).

13. Thus, any claim that incumbents in USWA enjoy no electoral advantages is simply contrary to the record. Often they are not even challenged in elections, and those who are challenged are successful in nearly all cases. Although nearly two hundred positions were subject to elections since the late 1940's, only three times during that entire period have candidates for International or District Director offices successfully run on platforms which were openly critical of the incumbent administration. Notably, two of these successful challenges occurred in 1977, immediately before USWA incumbents proposed and secured adoption of the rule barring non-member assistance.

I have read the foregoing affidavit and the facts stated herein are true and correct to the best of my knowledge and belief.

/s/ Clyde W. Summers
CLYDE W. SUMMERS

SUMMERS EXHIBIT A

Table 9.—STEELWORKERS ELECTIONS SINCE 1949

International Election—February 8, 1949

District 1	M. J. Walsh	14,572*
	Frank Trainor	5,419
District 6	John Mitchell	10,048*
	A. Craig	2,537
District 7	H. Charles Ford	17,486*
	John E. Gillespie	2,326
District 17	John A. Goney	4,333*
	John P. Wisniewski	3,253**
District 32	Walter J. Burke	10,836*
	Vincent Podlogar	1,825**
	Oakley Mills	578
District 33	H. A. Burkhammer	4,300*
	Earl T. Bester	547
	Frank Rupert	534**
District 36	R. E. Farr	7,323*
	Chester Ray	1,133**

International Election—February 10, 1953

District 7	H. Charles Ford	10,965*
	Richard G. Davidson	12,886
District 13	Eugene Maurice	8,221*
	James R. Brown	4,955**
District 26	James P. Griffin	20,504*
	Danny Thomas	7,889
District 33	Earl T. Bester	7,870*
	Walfred Laine	5,420**

International Union Special Election—October 25, 1955

International Vice President—		
	Howard R. Hague	400,017*
	Joseph P. Molony	184,542

District 15—John R. Sullivan	.....	7,788
Paul M. Hilbert	.....	7,126**
District 28—Berlin W. Ohler	.....	12,957
Nicholas Radlick	.....	7,883**

International Election—February 12, 1957

International President—		
David J. McDonald	.....	404,172*
Donald Rarick	.....	223,516**
International Secretary-Treasurer—		
I. W. Abel	.....	420,085*
William Klug	.....	181,264**
District 15—Paul M. Hilbert	.....	13,734**
John R. Sullivan	.....	6,269*
Daniel S. Deaton	.....	3,081
Stephen J. Gall	.....	2,781
District 28—Paul Schremp	.....	15,127
Berlin W. Ohler	.....	12,079*

International Election—February 14, 1961

District 5—Patrick Burke	.....	7,673*
James C. Nicholson	.....	5,622
District 29—Charles Younglove	.....	7,858
Otis Richards	.....	3,428+
District 33—Earl T. Bester	.....	6,296*
Tony V. Sante	.....	4,353**
District 38—Charles J. Smith	.....	20,597*
Wilfred Biggs	.....	7,778**

International Election—February 9, 1965

International President—		
I. W. Abel	.....	308,910
David J. McDonald	.....	298,768*
International Secretary-Treasurer—		
Walter J. Burke	.....	313,229
Al Whitehouse	.....	266,381

International Vice President—		
	Joseph P. Molony	300,414
	Howard R. Hague	278,786*
District 1—	Roy H. Stevens	10,576*
	Lawrence N. Spitz	10,059
District 5—	Jean Gerin-Lajoie	6,924*
	Jean Beaudry	5,911
District 16—	Paul Normile	7,626*
	Walter Bachowski	6,539
District 21—	William Nicholson	9,172*
	Ray F. DeMay	7,014
District 26—	James P. Griffin	16,230*
	Russell L. Thomas	14,772
District 30—	Harry O. Dougherty	8,763*
	Robert E. Washburn	4,866

International Election—February 11, 1969

International President—		
	I. W. Abel	257,651*
	Emil Narick	181,122**
International Secretary-Treasurer—		
	Walter J. Burke	285,923*
	Morros Brummitt	136,999**
District 4—	Mitchell F. Mazuca	8,786
	Anthony F. Barbieri	6,825+
	Michael Sam	5, 199
District 5—	Jean Gerin-Lajoie	11,612*
	Jean Beaudry	7,274
District 8—	Edward E. Plato	7,549
	Leander G. Simms	5,668+
District 15—	Joseph Odorcich	8,840
	Paul M. Hilbert	8,318*
	George Kutska	6,489
	Coleman Conroy	3,635**

(set aside because of irregularities)

District 20—Kay Kluz	.....	13,568*
Walter Bachowski	.....	10,610
Nicholas Mamula	.....	8,720**
James Huntermark	.....	4,692**
District 23—Homer E. Bussa	.....	7,636*
John C. Carroll	.....	5,684
District 26—Frank Leseganich	.....	13,845**
James P. Griffin	.....	11,683*
District 28—Joseph J. Kender	.....	7,021**
Paul E. Schremp	.....	5,615*
District 33—Glenn Peterson	.....	4,795*
Clarence Lawson	.....	4,401
District 36—Howard Strevel	.....	11,265*
Estes V. Riffe	.....	2,414
District 38—Joseph Angelo	.....	21,860
Lester H. Thornton	.....	17,809+

International Union Special Election—April 21, 1970

District 15—Joseph Odorcich	.....	10,944
George Kutska	.....	6,125
Coleman Conroy	.....	4,376**
Paul M. Hilbert	.....	846

International Union Special Election—January 19, 1971

District 38—Frank S. McKee	.....	13,691+
Thomas G. Consiglio	.....	12,888
Maclovio R. Barraza	.....	10,200

International Election—February 13, 1973

National Director of Canada—		
William Mahoney	.....	32,821*
Donald R. Montgomery	.....	22,734
District 6—Lynn Williams	.....	26,054+
Harry Greenwood	.....	13,526
District 7—Hugh P. Carcella	.....	17,915*
Al Lupini	.....	11,901**

District 19—	Walter Bleil	6,710
	Theodore J. Pynos	4,419**
	John Schneider	2,734+
	Regis Sager	811**
District 20—	Kay Kluz	10,558*
	Walter Bachowski	9,651
	Morros Brummitt	3,566**
District 26—	Frank Leseganich	8,874*
	Frank Trainor	8,476
	Robert Catlin	2,354**
	Louis Skarosi	1,406**
District 27—	Harry Mayfield	6,466+
	Logan Jones	3,805**
	Robert G. Mapes	2,565
	James Marazza	940**
District 28—	Joseph J. Kender	4,641*
	Frank Valenta	4,441
	Carl Roberts	4,167
	Charles Quinn	2,043
District 31—	Samuel Evett	23,394+
	Edward Sadlowski	21,606
	(set aside at request of both candidates)	
District 35—	M. C. Weston, Jr.	14,796*
	Leonard Webb	5,407
District 38—	Frank S. McKee	22,844*
	Thomas Consiglio	14,367

International Union Special Election—November 12-16, 1974

District 31—	Sam Evett	20,158*
	Edward Sadlowski	39,637

* Incumbent
** Local Union Officer
\+ Endorsed

SUMMERS EXHIBIT B

Report on

International Election of February 8, 1977

Submitted by the

INTERNATIONAL TELLERS

April 28, 1977

To all Local Unions of the
United Steelworkers of America:

We, the International Tellers, submit herewith a report of the International election of the United Steelworkers of America held on February 8, 1977. The results were tabulated by the U.S. Department of Labor.

This report includes the total number of votes cast for each office which appeared on the official ballot tabulated for each Local Union from which return sheets were received and counted.

INTERNATIONAL OFFICERS

International President

Lvold McBride	328,861
Ed Sadlowski	249,281

International Secretary

Lynn Williams	341,281
Ignacio (Nash) Rodriguez	220,731

International Treasurer

Frank McKee	316,466
Andy Kmec	242,191

INTERNATIONAL VICE PRESIDENT (ADMINISTRATION)

Joe Odorcich	324,419
Marvin Weinstock	231,848

INTERNATIONAL VICE PRESIDENT (HUMAN AFFAIRS)

Leon Lynch	303,958
Oliver Montgomery	251,782

NATIONAL DIRECTOR OF CANADA

E. Gerard Docquier	43,682
Donald H. Taylor	37,885

DISTRICT DIRECTORS

District No. 1	William J. Foley	11,682
	Clifton E. Sommers	5,540
	Peter Marsala	3,664
District No. 3	H. Len Stevens	8,180
	Ronald Douglas	4,217
District No. 4	Mitchel F. Mazuca	14,979
District No. 5	Jean Gerin-Lajoie	23,827
District No. 6	F. Stewart Cooke	23,350
	G. H. Gilchrist	18,859
District No. 7	James N. McGeehan	11,939
	Al Lupini	8,389
	Vincent J. Mancuso	7,416
District No. 8	Edward E. Plato	7,470
District No. 9	Paul J. McHale	11,986
	Frank Lunney	10,611
District No. 15	Paul E. Lewis	11,243
	George Kutska	6,920
	Ernest Wadsworth	6,176
	Andrew Bury	3,431
	George Vallus	2,737
District No. 19	James M. Coyne	9,004
	Walter E. Bleil	7,162

District No. 20—	Walter Bachowski	12,844
	Bill George	8,719
	Bill Welsh	5,293
	Louis Puskar	2,603
	Dwayne Cooper	1,709
District No. 23—	Paul D. Rusen	11,980
	Summers I. Dean	8,955
District No. 26—	Frank Leseganich	7,730
	Charles L. Hinchliffe	4,921
	Milton Cross	4,525
	Jack J. Williams	4,513
District No. 27—	Harry E. Mayfield	7,990
	Robert G. Mapes	5,983
District No. 28—	Frank J. Valenta	11,120
	Joseph J. Kender	3,500
District No. 29—	Charles Younglove	11,593
District No. 30—	Harry O. Dougherty	11,942
District No. 31—	James Balanoff	19,540
	Harry Piasecki	13,750
	James Baker	8,996
	Emmett Palmer	6,512
	Paul "Mark" Markonni	3,571
District No. 32—	Bertram McNamara	11,955
District No. 33—	Linus E. Wampler	9,070
	Peter J. Benzoni	6,986
District No. 34—	Buddy W. Davis	12,659
District No. 35—	Bruce Thrasher	13,600
District No. 36—	Howard Strevel	21,387
District No. 37—	Edgar L. Ball	16,894
District No. 38—	Robert J. Petris	21,213
	Roy Santa Cruz	16,106

Protests

We received timely protests to the election from 8 candidates for various offices. Those protests involved challenges to the conduct of the International election in 367 Local Unions.

Article V, Section 20 of the International Constitution requires us to send our report to each Local Union by May 1. Accordingly, we established a concentrated travel schedule. We conducted hearings in 25 cities throughout the United States and Canada in a period of 40 days. Because of the necessity to conduct hearings and move from city to city in a limited time period it was necessary to schedule hearings to begin at 7:00 a.m. on most days.

We wish to express our appreciation to the Local Union members who participated in these hearings for their cooperation in allowing us to keep * * *

SUPPLEMENTAL AFFIDAVIT OF JAMES BALANOFF

Lake County
State of Indiana

I, James Balanoff, being duly sworn, voluntarily depose and state as follows:

1. I have previously filed an Affidavit in this case and I have read the papers submitted by USWA including the Declarations of Lynn Williams, Joseph Odorcich, and Lloyd McBride.

2. Williams and Odorcich state that the only alternative the Union had to adoption of the "outsider" rule would have been to resort to Convention elections. They state that this was a topic of discussion among unnamed persons with USWA. (Williams, P5; Odorcich, P7).

3. At no time during any of the discussions of the "outsider" rule before the International Executive Board and the Constitution Committee or on the Convention Floor were Convention elections mentioned as an alternative to the "outsider" rule.

4. In fact, the only alternative to the "outsider" rule was mentioned on the Convention Floor, where a local proposed something like public financing of presidential elections. McBride disregarded the suggestion.

5. From the perspective of the "Official Family" Convention elections were, no doubt, considered as an alternative to the 'outsider' rule not to protect the Union but rather to insulate themselves from election contests. Former USWA President I. W. Abel and others mentioned this possibility after Sadlowski defeated Evett in a re-run election supervised by the Department of Labor. I believe the "Official Family" recognized that there would be a massive revolt by the membership if they tried to eliminate referendum voting, and therefore, they decided to

protect themselves from future election challenges by adopting the "outsider" rule.

6. It is true that Lloyd McBride did appoint Rudolph Nichols to the District 31 staff. I agreed with his appointment because I felt that he would be a capable staffman. However, after his appointment, Rudy Nichols fell in disfavor with the Administration because he and I developed a close working relationsip.

I have read the foregoing affidavit and believe the facts stated herein to be true and correct to the best of my knowledge and belief.

/s/ James Balanoff
JAMES BALANOFF

AFFIDAVIT OF EVA HOPE BOTHWELL

Eva Hope Bothwell, voluntarily deposes and states as follows:

1. My name is Eva Hope Bothwell. I am employed as a Secretary by the law firm of Rauh, Silard & Lichtman.

2. During the last year, I have typed letters which Mr. Rauh sent to Monsignor Higgins and Professor Harry Edwards which are dated May 17, May 29 and July 20, 1979 and are attached hereto as Exhibits A, B and C.

3. As a Secretary in the office, I was requested to locate responses Mr. Rauh received for Monsignor Higgins and Professor Edwards which are dated respectively May 17, 1979 and August 2, 1979 and are attached hereto as Exhibits D and E.

4. Exhibits A, B and C are true and accurate copies of letters which I typed and sent to Monsignor Higgins and Professor Edwards.

5. Exhibits D and E are letters which Mr. Rauh received from Monsignor Higgins and Professor Edwards which I found in our files.

6. I have read the foregoing Affidavit consisting of two typewritten pages, and I declare under penalty of perjury that the statements contained in it are true and correct.

/s/ Eva Hope Bothwell
EVA HOPE BOTHWELL

BOTHWELL EXHIBIT A

LAW OFFICES
RAUH, SILARD AND LICHTMAN
1001 Connecticut Avenue, N.W.
Washington, D. C. 20036

May 17, 1979

The Very Reverend Monsignor George Higgins
United States Catholic Conference
1312 Massachusetts Avenue, N.W.
Washington, D. C. 20005

Dear George:

Adlai Stevenson, I believe he was repeating Abraham Lincoln, said after his defeat in 1952 that "I am too old to cry and it hurts too much to laugh." I guess that's pretty much how I feel this morning after learning that you have accepted appointment to the Campaign Contribution Administrative Committee "to administer and enforce" the Steelworkers new rules prohibiting contributions by non-members to reform movements inside the union seeking to defeat the Official Family in a USWA election.

I do not need to tell so experienced a labor hand as George Higgins just what the Steelworkers' new rule that no one except a member can contribute to a USWA election campaign is going to mean. You know, as I know, that this is an out-and-out self-perpetuation provision for incumbents. The staff will ante up the money for the incumbents and the reform challengers will have no place to go for resources.

One of my proudest moments was reading a most generous and laudatory column you wrote about my role in the Mine Workers effort. I could not now perform a similar role under the USWA rules you are going to

administer and enforce. While it is permissible under the new USWA rules for a non-member professional to volunteer his personal time, "it would not be permissible," in USWA's own words, "for such individual to volunteer, or for a candidate to accept, such professional's facilities, secretarial or staff help, office space, or any other aid free of charge." That means, of course, that I could not do for a Steelworkers reform movement what you applauded my doing in the Mine Workers because I could not use my office, secretary, telephone, or anything else. Besides, all the Foundation money I raised to support our legal battles against Boyle would now be barred from the fray. If this USWA rule had been in effect in the Mine Workers in 1969, Tony Boyle would still be its president instead of the convicted murderer that he is.

This rule against non-member contributions is only a part of what the Steelworkers have done to make impossible any further substantial challenges to International officers or District Directors. They have sued the Foundations that helped try to ensure a fair election for Sadlowski the last time in the hope they would be frightened off in the future. They have sicced the IRS on the Association for Union Democracy for the "crime" of trying to obtain a fair USWA election in 1977. They have squared the circle with this rule you are going to administer and enforce.

You know the Steelworkers are not above stealing elections. When Ed Sadlowski finally obtained a Department of Labor supervised election in District 31 in 1974, he won by a 2-1 margin. Can you imagine how many votes thay had to steal to count him out in the first election run by the Steelworkers themselves? What the new rule does is make it unnecessary to steal votes because there cannot be any real opposition mounted by a challenger in the first place.

I hope you won't mind my sending you the enclosed piece I wrote for the *New York Times* on the whole out-

sider question. It was written in deep belief that union democracy is everybody's business. Precisely because I have so much respect for you I am saddened beyond words that you have lent your illustrious name to the USWA rule that ends the hopes of so many of us for some measure of union democracy in those undemocratic unions that exist today. I said I was too old to cry, but after writing this letter I am just not sure.

Sincerely,

/s/ Joseph L. Rauh, Jr.

JLR:ehb
Enclosure

The New York Times, Monday, January 17, 1977

OUTSIDERS' ASSISTANCE IN UNION ELECTIONS

By Joseph L. Rauh Jr.

WASHINGTON—The resolution of a question now being raised by president I. W. Abel and the "official family" of the United Steelworkers in their efforts to repel the challenge of Ed Sadlowski and his reform group may prove to be as important to the future of trade-union democracy as the outcome of the union's presidential election itself.

The question is this: Should persons not connected with the labor movement be permitted to contribute and otherwise assist in a union election? Abel says no. So do George Meany, president of the A.F.L.-C.I.O.; Albert Shanker, president of the United Federation of Teachers, and even so public-minded a union leader as Murray Finley, president of the Amalgamated Clothing and Textile Workers Union.

But without support from the public—financial contributors, volunteer workers, public-interest lawyers—the challenger to the union hierarchy would never have a chance.

Tony Boyle would be president of the United Mine Workers today, instead of a lifelong resident of a Pennsylvania prison, if the public—what Boyle and Abel and Meany and Shanker and Finley—all "outsiders" had not rallied to the support of the reform group.

For the challenger is almost always, as in the case of Sadlowski, a man with no personal financial means. The incumbent or the incumbent's hand-selected candidate has his campaign built in for him. The staff representatives in the Steelworkers Union, as in most unions, are hired, directed and controlled by the union president; practically all of the Steelworkers' 800 staff representatives are

working for the official candidate, Lloyd McBride. They contribute to his campaign what they are asked. They press the local unions to which they are assigned to nominate and support McBride. At a recent Labor Department meeting on the upcoming election, a local union president blurted out that "there will never be a fair Steelworkers' election until they lock up all the staff representatives."

Short of so drastic a remedy, building an outside counterforce to provide funds and assistance to the rank-and-file challengers is the only course that offers even the possibility of the reform group prevailing.

In their effort to bar public support for Sadlowski, the McBride forces have raised the specter of employers unlawfully contributing to the Sadlowski campaign. This has its amusing aspects for the large steel and other corporations have not hidden their distaste for Sadlowski. But there is also a serious side to the issue—who, or what, is an "employer?"

While Sadlowski appeals to the general public for funds, he has instructed his staff to reject any check or other contribution from a corporation or business entity, in the unlikely event that one should show up. Additionally, although the law does not require this, Sadlowski has also told his staff to reject contributions from certain individuals (officers, major stockholders) of companies doing any bargaining with the union, in the unlikely event that such a contribution showed up.

But this is not enough for those who want a total exclusion of the public from union elections; they want the word "employer" defined in the broadest and most unlimited manner possible, perhaps even treating as a forbidden contributor anyone who employs a maid, laundress or babysitter.

Since the term "employer," so defined, encompasses the entire public able to make a financial contribution

toward a public-interest struggle of this kind, such an interpretation would effectively bar the public from participating in any way, shape or form in a union-reform election, and the incumbent hierarchy of any union would be self-perpetuating.

So the issue is clearly drawn: Do persons outside the trade-union movement have a sufficient interest in the outcome of union elections to warrant their participation as personal and noninstitutional contributors, volunteer workers, legal counsel or otherwise?

The answer seems self-evident; the trade-union movement is not an island unto itself, the only major force beyond public influence. The manner of operation of labor unions, the presence or absence of democratic union processes, and the decisions reached by the elected officials all vitally affect the public interest.

Indeed, this has been recognized in Federal legislation; thus, the great growth of the trade-union movement in the 1930's and thereafter was accelerated by supportive Federal legislation such as the Norris-LaGuardia and Wagner Acts.

The suggestion that the public has no interest in the next president of the Steelworkers Union with its 1.4 million members and its tremendous national responsibilities flies in the face of history and current experience.

Joseph L. Rauh, Jr., a Washington attorney, is serving without fee to Ed Sadlowski, insurgent candidate for * * *

BOTHWELL EXHIBIT B

LAW OFFICES
RAUH, SILARD AND LICHTMAN
1001 Connecticut Avenue, N. W.
Washington, D. C. 20036

May 29, 1979

The Very Reverend Monsignor George Higgins
United States Catholic Conference
1312 Massachusetts Avenue, N. W.
Washington, D. C. 20005

Dear George:

Thank you for your May 21st letter and its warm and even tone. You are, of course, welcome to share our correspondence with whomever you wish and there are some in the union democracy movement (like the fine people in the Association for Union Democracy which the Steelworkers are trying to put out of business through litigation and the I.R.S.) with whom I am sharing the correspondence.

Having thanked you for the friendly tone of your letter, I have to say, since we're being wholly candid with each other, that you do not seem to have answered the basic thrust of my letter. Nowhere do you respond to the central point that the new Steelworkers' rules will render any rank-and-file challenge to incumbents absolutely hopeless. Nowhere do you respond to my statement that the staff will ante up the money for the incumbents and the reform challengers will have no place to go for resources. Indeed, as I pointed out, the challengers won't even be able to obtain counsel, while the incumbents will just go on using the regular union attorneys as their counsel. Nowhere do you suggest how I could have done the things you applauded in the Boyle

fight if the Steelworkers' rules had been in effect there. It's not a question of the new rules being a "hoax"; they are just what they purport to be—a prohibition against resources for challengers from the only place they can get them.

Nor is the issue whether referendum or convention elections are democratic—obviously both can be democratic and honest or undemocratic and dishonest depending on the particular situation. But without outside resources, a challenge to incumbency is rendered impossible whether election is by referendum or convention. Indeed, since you mention Walter Reuther, don't ever forget that he had a good part of the liberal community supporting him in ways the Steelworkers' rules now forbid when he upset the pro-Communist incumbents back in the forties.

There is no way the new rules can be "administered fairly and equitably." These rules are not ambiguous directions, but deadly specific and precise in their terms—challengers cannot seek any type of public help no matter how corrupt the incumbents. Actually, the chilling effect on potential challengers may well make administration unnecessary; and, if some stouthearted fellow does make a hopeless challenge, you'll have to disqualify him if he accepts the outside legal, public relations, financial or other support without which he can't even start to mount a campaign.

Look, dear friend, you must recognize that the Steelworkers don't want you for any fair and equitable administration of the plan (a compassionate executioner is still an executioner). They want your most respected name for public consumption and for a demonstration of their integrity to the courts and Congress when their rules are challenged as the union democracy movement will have to do for survival.

Let me end by saying that I, too, "do not consider Lloyd McBride to be another Tony Boyle." There was,

of course, less violence against the Sadlowski challenge in the Steelworkers than the Yablonski challenge in the Mine Workers. But if the Steelworkers' plan is upheld and followed in the rest of the union movement, McBride will go down in history as the man who dealt the deadlier blow to union democracy. At any rate, whoever of the two wins the blacker ribbon in that contest, wouldn't you want to take another look before finally lending your name to this attempt to prevent the very type of challenge to incumbency you once applauded.

Sincerely,

/s/ Joseph L. Rauh, Jr.

P.S. The lunch is on me at the Federal City Club whenever you're ready.

JLR:ehb

BOTHWELL EXHIBIT C

LAW OFFICES
RAUH, SILARD AND LICHTMAN
1001 Connecticut Avenue, N. W.
Washington, D. C. 20036

July 20, 1979

Professor Harry Edwards
University of Michigan
Law School
Ann Arbor, Michigan 48109

Dear Professor Edwards:

I am sure our paths have crossed over the years and certainly I know of your high standing in the field of labor law. Indeed, when I was up at Harvard for a visit, they were all talking about how sad they were that you had left them. I don't think they get turned down too often and they are not quite used to this sort of thing.

But I write on a wholly different subject and am sending this letter both to Ann Arbor and Boston (where I understand you are temporarily teaching at the Harvard Business School) because I wanted you to have it promptly.

Back in May, Jim Balanoff, the Director of USWA District 31, told me that it had been announced at the USWA Executive Board Meeting that Monsignor George Higgins, David Lewis and you had accepted appointment as the Campaign Contribution Administrative Committee "to administer and enforce" the Steelworkers new rules prohibiting contributions by non-members to reform movements inside the union seeking to defeat the "Official Family" in a USWA election. I have spoken to Monsignor Higgins who informed me that he had, in fact,

accepted but has withdrawn on grounds of the pressure of time. I write you today because it hurts me personally to have one of your distinction lend his prestige to this anti-democratic USWA venture.

I do not need to tell so experienced a labor hand as you just what the Steelworkers' new rule that no one except a member can contribute to a USWA election campaign is going to mean. It is an out-and-out self-perpetuation provision for incumbents. The staff will ante up the money for the incumbents and the reform challengers will have no place to go for resources.

I my self am more or less in the union democracy movement by accident. Most of the unions I have worked for over a lifetime have been more or less on the democratic side. But Jock Yablonski came into my office in May 1969, just a little over 10 years ago, and asked me to represent him. I did so and got a new perspective. I worked Miners for Democracy right thru till the inauguration of the reform group in December 1972 and have been working in that field ever since. Under the new USWA rules you are going to administer and enforce I could not now perform a role similar to the one I performed in the UMWA. While it is permissible under the new USWA rules for a non-member professional to volunteer his personal time, "it would not be permissible," in USWA's own words, "for such individual to volunteer, or for a candidate to accept, such professional's facilities, secretarial or staff help, office space, or any other aid free of charge." That means, of course, that I could not do for a Steelworker's reform movement what I did in the Mine Workers (and in the Sadlowski and Bachowski cases in the USWA as well) because I could not use my office, secretary, telephone, or anything else. Besides, all the Foundation money I raised to support our legal battles in the UMWA and USWA would now be barred from the fray. If this USWA rule had been in effect in the Mine Workers in 1969, Tony

Boyle would still be its president instead of the convicted murderer that he is.

This rule against non-member contributions is only a part of what the Steelworkers have done to make impossible any further substantial challenges to International officers or District Directors. They have sued the Foundations that helped try to ensure a fair election for Sadlowski the last time in the hope they would be frightened off in the future. They have sicced the IRS on the Association for Union Democracy (of which Clyde Summers is Chairman) for the 'crime' of trying to obtain a fair USWA election in 1977. They have squared the circle with this rule you are being asked to administer and enforce.

The Steelworkers' history of stealing elections is not a happy one. For example, when Ed Sadlowski finally obtained a Department of Labor supervised re-election in District 31 in 1974, he won by a 2-1 margin. Can you imagine how many votes they had to steal to count him out in the first election run by the Steelworkers themselves? What the new rule does is make it unnecessary to steal votes because there cannot be any real opposition mounted by a challenger in the first place.

I hope you won't mind my sending you the enclosed piece I wrote for the *New York Times* on the whole "outsider" question. It was written in the deep belief that union democracy is everybody's business. Precisely because you have such a high standing in the labor law field, it is discouraging for you to support and implement the USWA rule that ends the hopes of so many of us for some measure of union democracy in these undemocratic unions that exist today. I think Frank McCulloch said it best: "this is a case of the union hierarchy enlisting "outsiders" to keep "outsiders" out

(and the incumbents in). You are the most important of the present enlistees.

Sincerely,

JOSEPH L. RAUH, JR.

JLR:ehb
Enclosure

BOTHWELL EXHIBIT D

UNITED STATES CATHOLIC CONFERENCE
1312 Massachusetts Avenue, N.W.,
Washington, D.C. 20005
202—659-6795

Secretary For Special Concerns

May 21, 1979
Dictated May 18

Mr. Joseph L. Rauh, Jr.
Rauh, Silard and Lichtman
1001 Connecticut Avenue, Northwest
Washington, D.C. 20036

Dear Joe:

I am leaving within the hour for a series of out-of-town meetings which will keep me on the move for several days. Consequently my reply to your welcome letter of May 17 concerning my appointment to the Steelworkers' Campaign Contribution Administrative Committee will, of necessity, have to be rather brief. I am dictating my reply at home and have authorized my secretary to sign it in my absence. Upon my return to Washington, I will be happy to discuss this matter with you in greater detail—perhaps at the Federal City Club, unless, of course, the Club is sold out from under us while I am still out of town. Incidentally, I was sorry to learn that our good friend Bill Collins resigned from the Club as of last Friday, but I can't say that I blame him for getting out while the getting is good. He is a fine man. Not the least of his sterling qualities is that, during his many years at the Club, he served the most honest drinks in town.

I said above that your letter was "welcome." I meant that very sincerely. I am pleased that you did me the honor of stating very frankly how you feel about my hav-

ing accepted membership on the Steelworkers' committee. That's what friends are for—not merely to pat one another on the back, but to keep one another honest.

It is quite possible that I made a mistake in accepting membership on the committe. I would not have done so, of course, if the new ruling on campaign contributions had been promulgated unilaterally by the officers of the Union. Since it was adopted, however, by what I am told was a substantial majority of the delegates attending the last Steelworkers convention, and since I have great respect for the integrity and competence of the other two members of the committee, I didn't see how I could refuse to serve. Needless to add, I need another committee assignment like I need a hole in my head. In fact, I would rather take a beating than go to one more committee meeting. In any event, for better or for worse, I have never learned to say "no" on the telephone.

Now that I have, rightly or wrongly, accepted membership on the committee, all I can say is that, in cooperation with my two colleagues, I will do everything within my power to see to it that the new ruling on campaign contributions is administered fairly and equitably. I gather from your letter that you think this will prove to be absolutely impossible because, in your judgment, the new ruling is an elaborate hoax deliberately designed to keep the rascals in power. As of this writing, I am not fully persuaded that your judgment on this matter is correct. Moreover I must reciprocate your frankness by saying that I do not consider Lloyd McBride to be another Tony Boyle.

I also think—as I stated in the enclosed column—that some of those who intervened in the last Steelworkers election were out of order. I am told, in this connection, that the Auto Workers were not at all happy about the role that Victor Reuther played in that election—and I am sure you will agree with me that Doug Fraser and

his associates at Solidarity House are not a bunch of rascals.

As a long-time friend and supporter of the UAW, I would also have to say, subject to correction, that the Steelworkers' referendum election procedure, with all its faults and weaknesses, is just about as democratic as the caucus procedure of the UAW. It is my understanding that every UAW president, including our good friend Walter Reuther, was, in effect, chosen by the leadership caucus. It is also my understanding that union reps are expected to belong to this caucus and to help cover its expenses. I am not criticizing the UAW's election procedure, but I trust you will forgive me for saying that, in my opinion, you are being a bit unfair in singling out the Steelworkers for criticism while at the same time remaining silent about the election procedures of the UAW and other major unions. Somehow or other, Joe, I simply can't imagine your getting involved in a UAW election and can't imagine your carrying on a public campaign against the manner in which Reuther, Woodcock and Doug Fraser were elected to office.

Be that as it may, I will have to live with my decision until such time as I can assess, on the basis of my own personal experience, the merits of your very severe criticism of the Steelworkers new ruling. Meanwhile may I ask a favor of you? Would you authorize me to share the substance of your letter with my colleagues on the committee? You may or may not want me to quote verbatim from your letter in its present form. If not, could you spare the time to dictate a more technical and more impersonal memorandum which I could discuss with the other members of the committee either on the record or in confidence? I think they ought to know and would want to know how strongly you feel about this matter. Moreover, a frank expression of your own views about the Steelworkers ruling might prompt the committee to

look for ways and means of correcting the problem you are concerned about.

Thanks, again, Joe for your kindness in writing with such complete frankness and candor. I would have been disappointed if you had refrained from doing so simply for fear of ruffling my feathers or hurting my feelings.

Hope to see you soon.

With every best wish I remain,

Cordially yours,

/s/ George G. Higgins
REV. MSGR. GEORGE G. HIGGINS

NC FEATURES
FOR RELEASE WEEK OF FEBRUARY 14, 1977
THE YARDSTICK
740 Words

A Look at the Outside Interference in Recent United Steelworkers of America Union Elections

By Msgr. George G. Higgins

The United Steelworkers of America (USWA), the largest union in the United States, held its quadrennial election of officers Feb. 8. It was more hotly contested and attracted more attention in the media than any union election in recent memory. To a greater extent than usual people from outside the organization took sides, generally against the so-called official slate and in favor of the opposition.

This led the former to cry "foul" and to argue, as a matter of high principle, that outside "interference" in union elections tends to subvert the democratic process.

I deliberately stayed out of this controversy while the election campaign was under way, for I knew that anything I might say would be misinterpreted by one side or the other, probably both. But now that the election has been held, and while the ballots are being counted I can't resist putting in my two cents worth.

I am not sure I fully understand why the incumbents and their supporters got so upset about outside "interference." I can understand why they didn't like it, but I have the impression that they may have overreacted by condemning it. After all, this wasn't the first time outsiders spoke and raised money for their favorite candidates in a union election. And I suspect that the incumbents (who happen to be friends of mine) might have reacted less excitedly if the same group of outsiders had supported them instead of siding with the opposition.

So much for the principle (if any) involved in this controversy.

In practical terms, I thought that at least some of the outsiders made a nuisance of themselves and left themselves wide open to the charge of being a bunch of busybody reformers. Much of their radical rhetoric was shallow and almost always vague. Moreover, some things they said about the retiring USWA president, I. W. Abel, were less than fair and objective. I would bet the final tally will reveal that this kind of clumsy interference was resented by some otherwise neutral USWA members. To that extent, it had a boomerang effect.

If I were a union member, I think that regardless of my personal choice of candidates, I would have been turned off by a few of the outsiders who were obviously trying to peddle their particular philosophy of trade unionism. They appeared to be manipulating the USWA for their own purposes.

Prof. John Kenneth Galbraith, recently retired from Harvard, is a case in point. A distinguished economist with a flair for language which is rare in his dry-as-dust profession, Galbraith has opted in recent years for a vague form of democratic socialism as the only hope for the American economy. That's fair enough. But if I understand his writings, he attaches little importance to the labor movement as a force for constructive change in our society.

A decade ago Galbraith concluded that the labor movement is in the early stages of a permanent decline. "Since World War II," he wrote, "the acceptance of the union by the industrial firm and the emergence thereafter of an era of comparatively peaceful industrial relations have been hailed as the final triumph of trade unionism. On closer examination it is seen to reveal many of the features of Jonah's triumph over the whale." I take this to mean that he believes the American labor movement is

dead but doesn't know it. He sayd this explicitly in another context:

"Numerous organizations . . . regularly survive their function. One a union is in being there is nothing in continuing its existence—the collection of dues, the enrollment of newly hired members, the holding of conventions and the designation of officers—that is nearly so difficult as bringing it to an end."

If these supercillous words mean anything, they mean the USWA wasted its time holding this recent election and would have been better advised to hold a funeral service. Galbraith is obviously entitled to this opinion. But why did he waste his time getting so deeply involved in the steelworker's election and by serving as the principal fund raiser for the opposition slate?

Was Galbraith merely playing games to while away the time in his retirement? Or has he decided that the USWA does have a role to play in his new master plan for the American economy—a role which he will define for the union when he gets around to it? I am sure I don't know the answer to that one. I do know, however, that if Galbraith really believes what he has written, and never taken back, he has lots of gall trying to tell any group of organized workers whom they ought to vote for in a union election. The Yiddish word for that is "Chutzpah."

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BOTHWELL EXHIBIT E

THE UNIVERSITY OF MICHIGAN LAW SCHOOL
Hutchins Hall
Ann Arbor, Michigan 48109

August 2, 1979

Joseph L. Rauh, Jr., Esq.
Rauh, Silard and Lichtman
1001 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Rauh:

Professor Edwards is away from the office until September, so I am taking the liberty of answering your letter of July 20, 1979.

For your information, Professor Edwards does not presently sit as a member of the Steelworkers' Campaign Contribution Administrative Committee and I have no reason to believe that he will be sitting as a member of the Committee at any time in the future. His schedule is already so tight with outside commitments that there is no way that he can take on another assignment.

Thank you for your expression of interest. I will be sure to see that Professor Edwards receives a copy of your letter.

Sincerely,

/s/ Debra Jackson
DEBRA JACKSON
Secretary to

HARRY T. EDWARDS
Professor of Law

/DJ

SUPPLEMENTAL MEMORANDUM OF USWA BRINGING TO THE COURT'S ATTENTION THE DECISION OF THE CCAC AND OTHER MATERIALS

1. In Count IV of their complaint, plaintiffs allege that USWA's rule against the acceptance of election campaign contributions from non-members violates § 101 (a) (4) of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"), 29 U.S.C. § 411 (a) (4). According to plaintiffs, this violation occurs "[b]ecause the 'outsider rule' and the regulations promulgated to implement it will impede and impair exercise by USWA members of their right to sue as guaranteed by Section 101 (a) (4) of the Act. . . ." Complaint, ¶ 62. We have pointed out from the beginning that the rule on its face applies only to non-member support of election campaigns, not to non-member support of *bona fide* lawsuits to enforce members' legal rights—and thus that plaintiffs are attacking a "straw man". So that there could be no doubt that USWA's rule does not apply to election-related lawsuits, USWA submitted the question to the Campaign Contributions Administrative Committee ("CCAC"), chaired by former Secretary of Labor Willard Wirtz, which is a neutral body empowered by USWA's Constitution to render "final and binding" determinations as to the correct interpretation of USWA's "outsider rule".

The CCAC has now issued its opinion, which definitively establishes that USWA's rule does *not* prohibit the acceptance by members of contributions or other support from non-members with respect to a "lawsuit asserting candidates' legal rights in connection with elections. . . ." Opinion of the CCAC (attached hereto as Exhibit A) at 3.

Thus, under USWA's rule, plaintiffs Sadlowski and Samargia (and all other USWA members) are free to

accept contributions, in any form, from non-members to support lawsuits asserting their legal rights. Accordingly, USWA's rule does not, as plaintiffs allege, impair or impede the right of USWA members to sue. Plaintiffs' claim in Count IV should therefore be dismissed.

2. In Plaintiffs' Reply to Defendant's Statement of Genuine Issues, at 14, plaintiffs ask the Court to take judicial notice of the Magistrate's report in *Marshall v. United Steelworkers of America*, (CA No. 73-957, W.D. Pa., June 7, 1979), which plaintiffs say is "appended to the Kleiman Declaration." Since the Magistrate's report, recommending that attorneys' fees be denied to Sadlowski's counsel in that case, is not so appended, we attach it hereto as Exhibit B.

3. It has recently come to our attention that the Sixth Circuit in *Marshall v. Local Union 20, International Brotherhood*, 611 F.2d 645, 653 (6th Cir. 1979), affirmed a ruling by the district court in that case excluding as inadmissible the testimony of Professor Clyde Summers, which, as proffered in that case, was virtually identical to the initial affidavit of Professor Summers submitted in this case; indeed, in most respects the affidavit here is a verbatim copy of the excluded proffered testimony in *Local Union 20*. (A copy of Professor Summers' proffered testimony in *Local Union 20* is attached hereto as Exhibit C.) In that case, a union challenged on First Amendment grounds the determination of the Secretary of Labor that § 401(g) of LMRDA forbids contributions to a union election campaign by employers who have no dealings with the union in question. The claimed relevance of Professor Summers' testimony in that case was the same as that apparently claimed by plaintiffs here (Appellant's Reply Brief in *Local Union 20* at 17, n. 10):

> The relevance of the testimony to the matter at issue is beyond dispute. In *Buckley* [v. *Valeo*, 421 U.S.

1] it was the lack of any demonstrated "dramatic adverse effect on the financing of campaign and political associations" *Buckley, supra*, 424 U.S. at 21, that led to the Court's decision upholding the contribution limitation in the Federal Election Campaign Act. Professor Summers' testimony, however, demonstrates that the ban as read by the Secretary would have precisely such an effect.

The Court of Appeals found "without merit" the claim that the district court had erred in excluding this testimony.

Respectfully submitted,

/s/ Robert M. Weinberg
ROBERT M. WEINBERG
MICHAEL H. GOTTESMAN
JEREMIAH A. COLLINS
Bredhoff, Gottesman, Cohen,
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Petramalo
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036

Attorneys for Defendant
United Steelworkers
of America

SUPPLEMENTAL MEMORANDUM EXHIBIT A

DECLARATION OF KITTY MARCY

Kitty Marcy declares under penalty of perjury as follows:

1. I am presently employed as a secretary to Michael H. Gottesman and Robert M. Weinberg at the law firm of Bredhoff, Gottesman, Cohen, Chanin, Weinberg & Petramalo, 1000 Connecticut Avenue, N.W., Washington, D.C. 20036.

2. On May 30, 1980, Mr. Gottesman received a letter from the counsel to the Campaign Contribution Administrative Committee, enclosing an opinion of the Commission. Attachments A-1 and A-2 hereto are true copies of those documents.

I have read the foregoing and I declare under penalty of perjury that the statements contained therein are true and correct.

/s/ Kitty Marcy
KITTY MARCY

Executed this 24th day of June, 1980

EXHIBIT A-1

CAMPAIGN CONTRIBUTION
ADMINISTRATIVE COMMITTEE
Suite 414
1211 Connecticut Avenue, NW
Washington, DC 20036

May 30, 1980

Michael H. Gottesman, Esquire
Bredhoff, Gottesman, Cohen & Weinberg
1000 Connecticut Avenue, NW
Washington, DC 20036

Re: Advisory Opinion of the Campaign Contribution Administrative Committee, AO 1980-2

Dear Mr. Gottesman:

This is a corrected copy of the Committee's decision in AO 1980-2, correcting a typographical error on the original.

Will you please substitute this copy for the one which was mailed to you yesterday.

Yours truly,

/s/ Edward D. Friedman
EDWARD D. FRIEDMAN
Counsel to the Committee

EFD:sak
Enclosure

EXHIBIT A-2

CAMPAIGN CONTRIBUTION
ADMINISTRATIVE COMMITTEE

International Union of the
United Steelworkers of America

AO 1980-2

ADVISORY OPINION

APPLICATION OF ARTICLE V,
SECTION 27 TO THE FINANCING
OF LEGAL SERVICES

On April 3, 1980, the International Union of the United Steelworkers of America through its attorneys, who are also union members, filed with the Committee a request for rulings on three questions, the following of which is central:

> Does Article V, Section 27 (of the International Union Constitution) prohibit the solicitation or acceptance of monies (or other things of value) from non-members to finance lawsuits asserting candidates' (or other union members') legal rights in connection with elections?

The materials supplied by the union in support of its request indicate that the question submitted to the Committee arises in the context of a pending lawsuit, *Sadlowski* v. *USWA*, Civil Action No. 79-2953 (D.D.C.) in which the legality of Article V, Section 27 has been questioned.

The Committee provided the parties to the dispute with an opportunity to submit their positions on the issues raised by the union's request.

After a full consideration of all relevant facts and law, and for the reasons set forth below, the Committee decides that 1) it is appropriate for the Committee at this time

to issue an advisory ruling; and 2) the limitations imposed by Section 27 do not apply to the financing of lawsuits by non-members for the purpose of asserting the legal rights of candidates or other union members in connection with elections.

THIS MATTER PRESENTS A PROPER CASE FOR THE ISSUANCE OF AN ADVISORY OPINION

Article V, Section 27 of the USWA Constitution provides that:

> "No candidate (including a prospective candidate) for any position set forth in Article IV, Section 1, and supporter of a candidate may solicit or accept financial support, or any other direct or indirect support of any kind (except an individual's own volunteered personal time) from an non-member.

Paragraph (f) of Section 27 empowers the Committee to "recommend to the International Executive Board that additions or amendments be made to the regulations adopted by the International Executive Board." Paragraph (c) requires that candidates and their supporters file for review by the Committee, in advance of an election, the periodic reports required by the regulations as well as additional information which the Committee may from time to time require. While Section 27 provides explicitly for the filing of complaints with the Committee by any member who believes that another member is violating its provisions, it is clear that the structure of Section 27 in its entirety and the dictates of common sense require that the Committee take the fullest possible preventive action to ensure that union elections are conducted in accordance with the USWA Constitution. In order to be fully effective in this respect, the Committee must proceed on an advisory basis, whenever appropriate.

In this case, the request for an advisory ruling is made in effect by the International Union, through its attorneys

who are also union members. We treat this request in the same manner as we would one from any other member or group of members. The Committee was created by a provision of the Constitution of the International Union adopted by the International Convention in 1978, "to administer and enforce" the said Section 27. It was established under authority conferred by the Constitution on and exercised by the International Executive Board. In accordance with the requirement of the Constitution it was established as an impartial and independent body. Its decisions are made, by Article V, Section 27(f) of the International Union Constitution, "final and binding, and not subject to review by any tribunal within the Union". The International Union's standing is in effect as a party before the Committee. Its interest in clarification of the issues presented by the present request is legitimate and real.

SECTION 27 DOES NOT EXTEND TO FINANCIAL SUPPORT FOR LEGAL SERVICES TO VINDICATE LEGAL RIGHTS

The broad prohibitions of Section 27 extend not only to financial support of every form but also to services of all kinds. Its only exception is "an individual's own volunteered personal time." The provisions of this section and of the regulations approved contemporaneously with it, viewed in their Article V context, are replete with references establishing that the only support prohibited is support for the purpose of influencing election campaigns for the offices listed in Article IV, Section 1. If this clear inference of purpose to promote political candidacy were not drawn, this section would literally prohibit contributions of any kind by a non-member to any person who happened to be a candidate. This would obviously lead to absurdity.

Thus, the question before the Committee is whether direct or indirect support by non-members to finance a lawsuit asserting candidates' legal rights in connection with

elections constitutes support for the purpose of influencing an election.

This limitation on candidacy support cannot be interpreted so broadly. An intention to limit one's access to the judicial system, a province which is so fundamental to the structure of government, cannot be inferred. It would have to be established by clear and convincing expressions of intent. This is not the case here.

The actions of a candidate in seeking political office are qualitatively distinguishable from actions at law. The first entails a broad range of electioneering activities to influence an election, embracing all organizational, promotional and media services, including the development of lists of voting members, the establishment of campaign committees, the preparation, printing and dissemination of campaign literature and other similar political support forms. Actions at law entail the exercise of one's guaranteed entitlement to sue for the protection and vindication of legal rights, whatever they may be.

Section 27 was not intended to impede a member's assertion of his rights through the judicial process, and the Committee will not so construe it.

In different settings, involving comparable, though distinguishable cases, other bodies and courts have consistently recognized the distinction between political campaign activities and legal actions such as those under consideration here. Cf. FEC Advisory Opinion 1980-4, February 1, 1980, in which the Federal Election Commission said "The Commission does not believe there is any basis under the [Federal Election Campaign] Act for treating donated legal services to defend against a civil action as services rendered for the purpose of influencing the election of any person to Federal office." See also *Retail Clerks Union* v. *Retail Clerks International Association*, 299 F. Supp. 1012 at 1024 (D.D.C., 1969) where the court said "to interpret the words of § 401(g) [of the Labor-

Management Reporting and Disclosure Act] 'to promote the candidacy' in the manner defendants urge would conflict with other titles of the Act. The prohibitions of § 401(g) refer to direct contributions from union treasuries to candidates for, as examples, the printing and distributing of campaign literature, the renting of campaign offices, and the paying of campaign personnel. Under the circumstances of this case, at least, this lawsuit is not in the class of activities prohibited by § 401(g)."

This opinion is, of course, confined to services which are in fact legal services customarily performed by lawyers. The Committee recognizes the possibility that any ruling which it makes in general terms and in response to a broad inquiry may be misconstrued or distorted in an attempt to rationalize political activities as "legal services." It will deal with these questions whenever they arise on a case-by-case basis.

The union, in its request for an advisory opinion, has asked the Committee to rule on two supplemental questions.

The first is whether a different situation from that discussed above is presented "where the lawsuit is not a *bona fide* attempt to secure an adjudication of legal rights, but, rather, is motivated solely by a desire to promote a candidate's political campaign."

We make no ruling on this variation of the central question. Such hypothesis goes beyond what can be responsibly covered by generalization. The Committee would be exceedingly reluctant about putting its own interpretation on the quality of good or bad faith that attends an individual's asserting his or her legal rights in a court proceeding. We will, however, look at such a case on its facts if it arises.

Finally, the union requests a ruling as to whether the exception in Section 27, allowing support in the form of

"an individual's own volunteered personal time" is appropriately extended to include time provided at less than the provider's usual rate or on a contingent fee basis. The argument in favor of this appears to be that if Section 27 allows a non-member to donate services in their entirety free of charge, it also means that a non-member is permitted to donate part of those services by charging a rate which is less than the non-member's normal range of fees for those services.

In view of the Committee's ruling on the main question above, this supplemental question is irrelevant in the case of a lawsuit asserting legal rights. In such a case, a non-member may charge any rate since the activity would not fall within the prohibitions of Section 27. If, however, the supplemental question relates to a case where the non-member, who may be an attorney, provides other than legal services in relation to the assertion of legal rights, then the normal rules would apply. Such an issue is best handled in terms of specific factual situations. The Committee, therefore, makes no ruling on it in this case.

/s/ Willard Wirtz
WILLIAM WIRTZ, Chairman
For the Committee

SUPPLEMENTAL MEMORANDUM EXHIBIT C

PROFFERED TESTIMONY OF CLYDE W. SUMMERS

Question No. 1. Please relate your present employer, your position, and how long you have held your present position.

ANSWER: My name is Clyde W. Summers. I am Professor of Law at the University of Pennsylvania. I have been in that position since September, 1975.

Question No. 2. Please relate your education and training in the area of labor law generally, and the area of union elections and election campaigns, and the financing of union elections and election campaigns.

ANSWER: I have been studying and teaching labor law for more than thirty-five years. I received a Doctor of Laws degree from the University of Illinois in 1942. I later did graduate work in law at Columbia University, specializing in labor law, and particularly in the rights of union members in the internal processes of unions. I received degrees of Master of Laws and Doctor of the Science of Laws from Columbia.

I taught labor law, among other subjects, at the University of Toledo for six years, at the University of Buffalo for six years, and at Yale University for nineteen years, prior to going to the University of Pennsylvania. During these years, my primary teaching interest has been labor law and labor relations. Within that field my major scholarly research and writing has been on the internal affairs of unions and the democratic rights of union members.

Question No. 3. Please relate the publications, treatises or other scholarly works that you have prepared and published in the areas of labor law, union elections and election campaigns.

ANSWER: I have written more than one hundred law review articles, monographs, symposia contributions, and

other pieces of various aspects of labor law. At least a third have been related to internal union problems, and they included analysis of both legal and practical aspects of union government. The following are among those which are most closely related to union elections:

Democracy in Labor Unions, American Civil Liberties Union, 1952.

"Legislating Union Democracy," Proceedings, Tenth Annual Meeting, Industrial Relations Research Association (1957).

"The Usefulness of Law in Achieving Union Democracy," *Journal of the American Economic Association*, Vol. 48, p. 44 (1958).

"Judicial Intervention in Internal Union Disputes," *Buffalo Law Review*, Vol. 7, p. 405 (1958).

"The Public Interest in Union Democracy," *Northwestern University Law Review*, Vol. 53, p. 610 (1958).

"The Role of Legislation in Internal Union Affairs," *Labor Law Journal*, March, 1959.

"Labor's Public Responsibility in Internal Union Affairs," in Symposium of National Institute of Labor Education (1960).

"Preemption And the Labor Reform Act—Dual Rights and Remedies," *Ohio State Law Journal*, Vol. 22, p. 119 (1961).

"Judicial Regulation of Union Elections," *Yale Law Journal*, Vol. 70, p. 1221 (1961).

"American Legislation for Union Democracy," *Modern Law Review*, Vol. 25, p. 273 (1962).

"Rights of Unions and Union Members," in *Rights of Americans*, (Ed. N. Dorsen, 1971), p. 591.

In addition, I acted as faculty advisor of a large study made by Yale Law School students of union elections

entitled, Union Elections and the LMRDA: Thirteen Years of Use and Abuse, 81 Yale L.J. 407 (1972).

Question No. 4. Has your research in these areas been limited to strictly legal problems as reflected in the cases or have you studied how unions actually functioned.

ANSWER: In all of my research, I have always tried first to learn what the union practices were and to understand the practial problems. For me, the question has always been how the law responded to the realities of union life. For example, before I wrote a legal article on "The Right to Join a Union," 47 Col. L.Rev. 33 (1947), I researched and wrote "Admission Policies of Unions," 61 Q. J. Econ. 66 (1946); and before I wrote "Legal Limits on Union Discipline," 64 Harv. L.Rev. 109 (1951), I wrote "Disciplinary Powers of Unions," 3 Ind. & Lab. Rel. Rev. 483 (1950), and "Disciplinary Procedures of Unions," 4 Ind. & Lab. Rel. Rev. 15 (1950).

The same general principle of first learning union practices has been followed in writing on union elections. For example, the monograph "Democracy in Labor Unions," written for the American Civil Liberties Union was based on extensive discussions with union lawyers, union leaders and others personally familiar with the problems. The article on "Judicial Control of Union Elections" was based on studies of union election disputes in New York and a large number of interviews with lawyers and candidates involved in those elections. The large study published in the Yale Law Journal was based on hundreds of interviews across the country of Department of Labor officials, union lawyers—union officers and defeated candidates.

I might add that the study made by the Yale Law School students is considered by the Department of Labor itself as a definitive study and, as I am told, is required reading for all lawyers engaged in enforcing Title IV of the Landrum-Griffin Act. To my knowledge,

the Department of Labor has never itself made an equivalent study.

Question No. 5. Could you relate what practical experience you have had in the area of union elections and election campaigns.

ANSWER: I have frequently been consulted by individuals or groups who are campaigning for union office, or by their lawyers concerning problems or disputes arising out of election campaigns. These include, for example, the long battle during the 1950's in Local 88 of the Master, Mates and Pilots in New York City, the repeated contests in the 1960's in District Council 9 of the Painters in New York City, the election contest in Local 6 of the Hotel and Restaurant Employees in New York City, and the National election contest for president of the International Union of Electrical Radio and Machine Workers.

I was involved at various stages in the election contest in the United Mine Workers, working with the Miners for Democracy, the insurgent group which was trying to unseat President Boyle. After the insurgents won, I prepared draft constitutions for the national union, the districts and the local unions. Those drafts were based on extensive discussions with union officers, members and lawyers, and in drafting those constitutions the most critical issue was guaranteening a democratic election process.

I am on the board of directors of the Association for union Democracy, an organization devoted to protecting the democratic process in unions and the rights of union members. That organization is constantly involved in union election disputes, receiving complaints that union elections are not being properly conducted.

I served as Impartial Umpire for elections in the New Haven Musicians Union which had a membership of seven or eight hundred members. Both of the contesting

factions asked me to serve, because they were unable to agree on how the election should be conducted. This required establishing detailed ground rules on every aspect of the election and enforcing those rules in a way that both factions would agree gave them equal opportunity to campaign and solicit votes.

Question No. 6. Have you ever been involved in the formulation or implementation of any legislation concerning union elections and election campaigns?

ANSWER: In September, 1957, at the time of the McClellan Hearings, I was named Chairman of the Governor's Committee on Improper Union-Management Practices by Government Harriman of New York. Our charge was to recommend legislation to correct the abuses revealed by the McClellan Committee.

We held hearings, had a large number of informal discussions with labor lawyers and union officials, and engaged in systematic research projects. The article, "Judicial Control of Union Elections," mentioned earlier, was one of the by-products of that work.

The first piece of legislation we recommended defined and enforced the fiduciary obligation of union officers, and it was adopted. The passage of federal legislation removed the remand for state legislation and we did not develop the planned drafts on other aspects, such as union elections.

In November, 1957, I was asked by Senator John Kennedy, to serve on a committee of experts to recommend legislation concerning internal union affairs. That committee, chaired by Professor Archibald Cox, prepared preliminary drafts of proposed legislation. These were forerunners of what ultimately became the Landrum-Griffin Act. During this period I consulted from time to time with members of Senator Kennedy's staff concerning the wording of particular provisions in the statute.

Much of this involved the provisions of Title IV dealing with union elections.

Also during this period I was a member of the labor committee of the American Civil Liberties Union which made proposals for legislation, including regulation of union eelctions. The ACLU proposals, published in a pamphlet entitled "A Labor Union Bill of Rights," was heavily borrowed from in bills submitted in Congress. In August, 1958, I prepared for the ACLU a criticism of the bill that has passed the Senate. Much of the criticism was directed at Title IV—Elections. When the bill was redrafted in 1959, most of the points criticized were corrected.

I might add that in May, 1958, I testified before the Senate Committee on labor and Public Welfare concerning the proposed legislation.

Question No. 7. Is it fair to say, Proffesor Summers, that you are considered one of the leading authorities on problems of internal democracy in unions, the rights of union members, including union elections and election campaigns and the financing of union elections?

ANSWER: I suppose I have studied these problems longer, given them thought, and written more concerning them than almost any one else, especially any lawyer or legal scholar. I have been deeply concerned with these problems and have been involved in them for thirty-five years. One accummulates a lot of information and knowledge in that length of time. I have tried to read all I can which is related, but much is not written and one learns it through a multitude of contacts and experience. I have been fortunate to know a number of people who have a wealth of practical experience in this area which they have shared with me.

Question No. 8. Do you have an opinion as to whether there are special problems associated with union

election campaigns and financing those campaigns which are different from other types of elections?

ANSWER: Yes, I do.

Question No. 9. What is the basis of your opinion?

ANSWER: It is based on an accummulation of thirty-five years of study and experience in the field of internal union problems and union democratic processes which I have just described.

I should emphasize that there has been no comprehensive study published on the methods by which union elections are financed. Much of the information is common knowledge to those familiar with what goes on in union election campaigns and who participates in those campaigns. Specific examples, however, are often hard to document because those involved do not want to talk for the record.

I would also want to emphasize that to the best of my knowledge the Department of Labor has made no systematic study of the financing of union campaigns. They have held no public hearings on the problem; so far as I know, they have made no effort to consult systematically a range of persons who might be specially informed; and I know of no effort to collect systematically the experience of those in their own regional offices who have direct contact with these problems.

Question No. 10. Can you describe some of those aspects of union election campaigns and financing those campaigns which you consider make them different from other types of elections?

ANSWER: The most significant characteristic of union elections is that unions do not have a two party system. Only the International Typographical Union has two established parties which regularly present competing candidates. In all other unions the incumbent officers control with is commonly described as a one-party

bureaucracy. They have control of the political machinery of the union through the appointed staff representatives, the union newspaper, and the administration of the collective agreement and other union affairs.

There is simply no practical possibility in most unions for any continued stable opposition group which can be a competing political part. For this reason, union elections are frequently not contested.

Opposition groups in unions coalesce only when a substantial number of members become dissatisfied with the way in which the incumbent administration is conducting a union. Elections are contested when dissatisfaction is widespread enough that there is some hope of winning in spite of the advantages of the incumbents.

Question No. 11. Professor Summers, you emphasize the advantage of the incumbent officers in an election. Could you be more specific as to what those advantages are?

ANSWER: Yes. The incumbents have marked advantages at four crucial points:

First, and most important, they have control of the paid staff of representatives or business agents who provide the back-bone of the incumbents' political organization. The paid staff owe their jobs to the officers, take orders from the officers, take orders from the officers, and can be dismissed by the officers. They have no practical protection from dismissal—there is no Hatch Act for union employees. The staff representatives are in constant contact with the members, handling grievances and providing other union services. In many cases, particularly when members are scattered in small numbers at many locations, the staff representatives are the voice and arms of the union. They have constant opportunity in their contacts with the members to extol the administration and to criticize the opposition, and they do it under the highly persuasive circumstances of dispensing services and benefits to the members. Under the law, they are

not to campaign during working time, but the Department of Labor's Regulations permits them to engage in "campaigning incidental to regular union business." For practical purposes, it is difficult to prohibit their engaging in anything other than the most blatent campaigning during normal working hours.

Second, the incumbent officers have control of the union newspaper. There is no such thing as a free and independent press within the union. The editor of the union newspaper is appointed by the officers and can be removed by the officers. The editorial policy and news stories are subject to the officers' control. The newspaper, paid for by the union dues and sent to every member at union expense, is regularly used to advocate the administration's policies, praise the work of the officers, and to publicize their pictures and activities. At the same time, it can be used to ridicule any criticism of the administration and discredit any potential opposition candidates. Indeed, a member who plans to run in opposition date not become visible too soon lest he be destroyed before the campaign begins. The law prohibits the use of the newspaper to advocate the candidacy of any person, but in practical terms this prevents only the most open advocacy in the few months immediately prior to the election. This temporary restraint cannot erase the effects of constant praise and publicity during the three or four years between elections. Nor can opposition candidates erase the effects of earlier condemnations in the newspaper.

Third, the incumbents have already access to the members. The officers can find excuses in official business to appear before the members and to contact members personally. They have opportunity and ability to develop names, addresses and telephone numbers of union members so they can mail out campaign literature or organize telephone campaigns. The law requires equal access to membership lists, but there is no practical equality

when the incumbent administration includes the secretary treasurer of the union.

Fourth, the officers have access to legal services at the union's expense. In an election campaign there is need for constant legal advice, and often need for legal proceedings. The officers, while running for office, are also responsible for conducting the election. They can use the union's lawyer, paid from union funds, to handle practically all of the legal problems arising during the campaign.

Question No. 12. How do these advantages of the incumbents relate to the financing of union election campaigns?

ANSWER: The simplest way of stating it is that if neither side had any money for the election camapign, the incumbents' advantage would be so great that in large local unions or in international unions opposition candidates would have no chance of winning. Indeed, only the outraged or foolhardy would even try to run in opposition to the incumbents.

Question No. 13. Could you be a bit more specific as to the facts on which you base that conclusion?

ANSWER: Certainly. The incumbent officers have a paid built-in campaign organization in the paid staff representatives. If opposition candidates are to make contacts in a large union, and particularly a scattered union, they will have telephone charges and travel expenses, have to rent meeting halls, and in many cases take off time from work to meet with members. To counteract the effects of the union newspaper, the opposition will have to print and distribute a large amount of campaign literature. Often it will try to publish a newspaper of its own. To find out the names and addresses of the members, the opposition will have to hire people to copy the membership list, and of course, pay for any mailings to the members. And the opposition

will need legal help which will require payment of lawyers' fees, or finding a lawyer who will contribute his services.

In short, the incumbents can run a campaign with little or no money. The opposition cannot even get started without substantial funds, contributed either in cash or in kind.

Question No. 14. Could you relate for the Court how union election campaigns are customarily financed?

ANSWER: There are some important differences in the way incumbents customarily finance their campaigns and the way the opposition groups finance campaigns. They really ought to be described separately.

Question No. 15. Describe first the way incumbents finance their campaigns and then describe how insurgents finance theirs.

ANSWER: For the incumbents, particularly in large locals and in international unions, the largest single source is probably the paid staff. They are expected to contribute, or are assessed, and this is often a substantial amount—often several hundred dollars. In some cases they have been given a salary increase of as much as a $1,000, and then asked to contribute that amount to the campaign fund. Such contributions are not limited to business agents, but may extend to allemployees, including secretaries and janitors. I would emphasize again that there is no Hatch Act for union employees. In most unions, this contribution system is informal, if not surreptitious, but it may be formalized. For example, in the Auto Workers there is a so-called "Flower Fund" made up of voluntary contributions from union employees and it is available for such political purposes, along with others.

The officers themselves, of course, contribute from their own salaries to the campaign fund or spend their own money to promote their resolution. Because their

salaries are normally far in excess of the earnings of their members, they are able to spend much more.

The second major source of funds for incumbents probably is contributions from the union members. Here the incumbents have marked advantage over the opposition because they have had opportunities to render services or give favors in the past. More important, they have the paid staff representatives or business agents to solicit such contributions systematically by personal contact.

A third source of funds, normally disguised and indirect, is a testimonial dinner for an individual officer. The returns from the tickets to such a dinner and the advertising in the programs are designated as a gift to the individual for his service, but this gift provides him money to help finance his reelection campaign. The amounts received may range from $5,000 to more than $50,000. Those who buy tickets or purchase advertisements include not only members and paid staff representatives, but those with whom the union does business.

Question No. 16. How do the methods used by opposition candidates to finance their campaigns compare with those you have just described?

ANSWER: Quite obviously, the opposition candidates cannot obtain equivalent contributions from paid staff representatives. Nor can they raise substantial funds by testimonial dinners.

Opposition candidates customarily finance their campaigns in the first instance out of their own pockets and out of loans or gifts from friends. They get contributions from sympathetic union members, but at the beginning they may have few open supporters and they do not have a large organization to solicit contributions. They have to do enough publicizing and campaigning to make themselves appear as a viable candidate before they begin to get support from any substantial number

of members. Even then, the individual contributions of members is inevitably small. Seldom is it enough to mount a really substantial campaign, and it is almost never enough to match the resources of the incumbents.

The opposition candidate must often rely in substantial measure on help from outside the union, from friends or those who are sympathetic with what he is doing. Almost always he will have to find a lawyer who will contribute his services without charge. He will have to find some person or organization which will give him free use of a meeting room and a printer who will print his campaign literature free or at reduced rates, and get other such help from the outside.

Question No. 17. You speak of union candidates getting money from sources outside the union. Is this a common and accepted practice?

ANSWER: Yes. It has long been a common and accepted practice. Members or officers of one union will often contribute to the election campaign in another union. For example, when insurgent groups in certain New York City unions were trying to oust alleged Communist leaders in the 1940's and 1950's, leaders of other unions helped finance their campaigns. It was said that the ILGWU gave money to the insurgents in District Council No. 9 of the Painters, among others. Later, other outside money was given to those who were trying to oust leaders in the same union who had become dictatorial and corrupt. Those who opposed and ultimately defeated President Carey of the International Union of Electrical Workers got help from those in other unions.

It is difficult to get hard evidence as to exactly who is contributing, but apparently the Auto Workers' "Flower Fund" has been used on a number of occasions to help insurgent candidates who were trying to defeat corrupt and undemocratic administrations. Reportedly, it gave substantial help to the Miners for Democracy in

their struggle to oust Tony Boyle in the United Mine Workers. In the Steelworkers, it was reported that leaders of other unions contributed to Abel in his campaign against McDonald, and in the most recent election in the Steelworkers both sides reportedly got substantial contributions from outside.

Question No. 18. Have these outside contributions come from sources other than other union or union leaders?

ANSWER: Yes. For many years, individuals or organizations interested in promoting honest and democractic unions have contributed to insurgent groups in unions which were trying to get rid of corrupt and oppressive union officers. These contributions took the form of cash donations, free legal services, free printing and free organizational work. For example, during the 1950's, the Association of Catholic Trade Unionists was active in a number of internal union struggles in New York City. It provided the major support for the insurgent group in Local 88 of the Master Mates and Pilots which finally defeated a dictatorial administration. Other church groups have been involved in less substantial measure.

The long struggle in the Mine Workers to oust Tony Boyle relied heavily on outside support. Much of the money for legal services to protect the rights of miners to a fair election came from foundation grants. Contributions came from a larger number of individuals as a result of a broad public solicitation campaign on college campuses and elsewhere. Friends and relatives of mine workers who were workers, employers and businessmen outside the coal industry made substantial contributions.

Question No. 19. Have those contributions from outsiders included contributions by lawyers representing oppoision groups?

ANSWER: Certainly. Rarely does an opposition group have enough money to pay a lawyer much more

than out-of-pocket expenses. One of the difficult problems of insurgents is to find a competent lawyer who can and will contribute his services. In almost every case where an insurgent group has been successful there has been a dedicated lawyer who has contributed hundreds of man hours to the cause. In dollar value terms this has often been the largest single contribution to the campaign. Without this contribution, the opposition group would not have had the smallest chance of success in many cases.

Question No. 20. Have contributions by outsiders been limited to insurgents, or have the incumbents also obtained contributions from outsiders?

ANSWER: Incumbents have also frequently obtained contributions of aid from outsiders, either other unions, individuals or organizations, although the amounts are probably smaller. Such contributions are, of course, much less important to the incumbents because they have less need of money and have more ability to raise money through the paid staff. Their outside money is more apt to come through personal gifts and testimonial dinners.

Question No. 21. Could you tell us whether among unions and others such contributions from the outside have generally been considered as an accepted and proper part of financing union election campaigns.

ANSWER: Up until the last two years no one, and I would emphasize no one, seriously suggested that there was anything inappropriate about union candidates soliciting financial support from non-members. Of course, it would be inappropriate to take money from employers with whom the union bargaining collectively or otherwise did business. Also taking money from the Communist Party woul place a stigma on a candidate.

Union constitutions placed no such restrictions on such contributions. In 1950, I examined the discipline procedures of some 180 international unions. They pro-

hibited dual unionism, aiding employers, and many other offenses, but not one prohibited a candidate from seeking outside campaign contributions. Unions have punished all manner of conduct as "disloyalty" or "unbecoming conduct," but I know of not one single case of a member being disciplined for accepting such a contribution.

Nothing in the McClellan Committee investigations pointed to such contributions as an evil, except for the concern with "sweetheart" deals in collective bargaining. Union officers, and likewise candidates for union office, the hearings emphasized, should keep full arms length from employers with whom they dealt at the bargaining table. But there was not the slightest suggestion that campaign contributions from ousiders were per se improper.

The Ethical Practices Code on Union Democratic Processes, adopted by the AFL-CIO in 1957, contained provisions to quarantee free, fair and honest elections, but it does not prohibit outside contributions in election campaigns. At the time the Code was adopted there was no suggestion that all such contributions should be barred.

This acceptance of such contributions has not changed since the passage of the Landrum-Griffin Act. Although hundred of elections have been challenged under the Act, and outside contributions have been commonplace, this case is apparently the first time a losing candidate has challenged an election on this ground. The Department of Labor has conducted a large number of elections under the Act, and those elections are, of course, required to be conducted in strict conformity with the Act. In many of those cases one or both of the candidates received financial support from outside sources, and under circumstances which the Department must have been aware of those sources. But there is no evidence that the Department of Labor has sought to prohibit all such contributions. The exhaustive study of the Department's administration of the statute made in 1971-72 turned up no

instance in which the Department either at the district or national level criticized or sought to curb such contributions.

Only within the last year, has the Steelworkers placed such a restriction in its constitution, and this seems to be part of an effort of the administration to avoid any effective challenge by an opposition candidate in the future.

Question No. 22. What, in your opinion, would be the practical effect of prohibiting all contributions to union election campaigns except those made by rank and file members?

ANSWER: It would gravely damage, if not destroy the possibility of democratic elections in unions, particularly in large local unions and in international unions. The incumbent officers have such built-in advantages in union elections that they need no substantial financial contributions to insure their reelection. In addition, they have built-in methods of obtaining contributions from union members, particularly from paid staff representatives, business agents and employees.

If opposition groups are barred from getting any help from the outside, they can, in most situations, have no hopes of mounting an effective campaign. They will not even make enough of a beginning to present themselves as plausible candidates, and without that they cannot even create the base for obtaining contributions from other members. Running as an opposition candidate carries with it not only heavy burdens, but risks of reprisals or ostracism. Those who support opposition candidates share those burdens and risks; most members will not join obviously lost causes.

The result is that there will be few opposition candidates when the prospect of success is hopeless. Elections will go uncontested, or contested only by token candidates. More important, elections will fail to serve even their

most elementary purpose of revealing and measuring dissatisfaction in the union. Few will bother to criticize union policies when there is no hope of changing them; few will protest against their officer's ineffectiveness or corruption when there is no hope of removing them. If the opposition does not have something like an equal ability to campaign, the election results will misrepresent the membership. Elections will be uncontested even though there is substantial dissatisfaction, and incumbents will win by heavy majorities even though more than half of the members are dissatisfied with their performance. Many members will simply not bother to vote in what is obviously not a meaningful or fair process.

Question No. 23. In the period of 1956 to 1959, when legislation on union democracy was being discussed was there any general recognition of this problem of providing fair elections in unions where the incumbent officers had such great advantages?

ANSWER: Yes. In 1956, the outstanding study on union government and union political process was published. This book, Union Democracy, by Lipset, Traw and Coleman pointed out that the two-party structure in the Printers Union was an aberration, and that the one-party structure was almost inevitable. It also pointed out the devices by which incumbent officers were able to perpetuate themselves in power, and the nearly insuperable advantages they had over opposition candidates. The study pointed out, for example, the great advantage incumbent officers had because of their control of the union newspaper and paid staff. These ideas became a part of the public discussion of those concerned with possible legislation to protect and encourage union democracy. They were implicit in a variety of proposals which sought to strengthen the position of dissenting members or opposition groups vis a vis union officers. Indeed, it was the very root of what became Section 401(g) to prevent union officers from exploiting the advantage they had because

of their control over union funds. Other provisions in the statute reflected the same concern of trying to equalize the positions of the incumbents and the opposition.

This problem was publicly acknowledged by the unions themselves. They accepted the principle that the officers should not be able to use union funds to get reelected. The one criticism of a blanket prohibition of the use of union funds was that in some circumstances it would work to the disadvantage of the opposition. A. J. Hayes, President of the Machinists, and Chairman of the AFL-CIO Ethical Practices Committee, pointed out that in elections for national office, opposition candidates often relied on funds from local unions who opposed the national officers. He testified before the Senate Committee—

> "It has been the policy of our organization ever since its existence that no national or international officer could use the money of the organization in connection with his campaign for office . . .
>
> However, I believe it would be very unfair to a member of local lodges who may be opposed to me, as international president, and who may want to promote opposition to me in the next election, if they could not financially support the candidate of their choice.
>
> It seems to me that a prohibition against national or international union officers using the money of the organization in connection with their campaigns, is good; I favor that.
>
> However, the prohibition should not extend to local or district lodges because if this proposal became a law, the incumbent in office would have a tremendous advantage."

(Hearings before the Subcommittee on Labor of the Committee on Labor and Public Welfare, U.S. Senate, 85th

Cong. 2d Sess. on Union Financial and Administrative Practices Procedures, May 8, 1958, page 538).

Question No. 24. A final question. In the case now before the court, the election is in a local union with 12,000 members, who are employed by 450 to 520 different employers. In your opinion, is this the kind of situation in which the advantages of the incumbent is relatively small, and is it the kind of situation in which the opposition's need for financial contributions from the outside is relatively severe or relatively minor.

ANSWER: This is the kind of situation in which the incumbent has an enormous advantage and the opposition candidate has great difficulty in even getting his campaign off the ground. To even make the members aware of his candidacy and his platform, he must try to reach them at hundreds of locations. Soliciting individual contributions from such small widely scattered units is nearly impossible without a large organization, but an organinization cannot be built without substantial expenditures. To campaign and raise money, the candidate must take off time from work, but then he has no income of his own to use.

In contrast, the business agents are regularly in contact with the members, they can find business reasons to visit the locations, and then engage in campaigning "incidental" to such business. The incumbent officers can also spend their days going from location to location on union business manifesting their concern for the members. The incumbent officers and business agents need not solicit any contributions from the members; they can use money from their own salaries, paid by union dues money, to finance a campaign which will keep them in office.

If an opposition candidate is limited to campaign funds contributed by rank and file members, he will not be able to conduct more than a token campaign, and have almost

no chance of winning regardless of his merits or the issues. With so little chance of winning, he will not even try to run, and if he does other members will be reluctant to join an obviously losing cause. The affect will be to leave the incumbents unchallenged even when there is widespread discatisfaction. The crucial democratic function of elections will be defeated; ineffective corrupt and oppressive administrations will remain in power.

PLAINTIFFS' RESPONSE TO DEFENDANT USWA'S SUPPLEMENTAL MEMORANDUM

USWA has sought leave to file a Supplemental Memorandum directing the Court's attention to the decision of its Campaign Contribution Administrative Committee which, at the urging of the USWA counsel, issued an advisory opinion on the scope of the "outsider rule" vis-a-vis USWA candidate's right to initiate legal proceedings.[1] The substance of the CCAC opinion—finding that the rule does not prohibit *bona fide* lawsuits—simply parrots the view that Steelworkers' counsel have advocated throughout this litigation despite the clear and unambiguous language of both the "rule" and the implementing "regulations." The CCAC ruling certainly came as no surprise to Plaintiffs given the fact that the so-called "neutral members" were selected by USWA President McBride and General Counsel Kleiman and their per diem

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[1] Defendant has also appended to its most recent filing proffered testimony of Professor Summers which was offered by Teamsters Local 20 in the case of *Marshall* v. *Local 20*, 101 LRRM 2195 (N.D. Ohio) aff'd, 611 F.2d 645 (C.A. 6, 1979). That was a suit brought by the Secretary of Labor under Title IV in which the Department of Labor alleged that a candidate for union office had accepted "employer" moneys. The *Local 20* case has no bearing here inasmuch as Plaintiffs do not contend that candidates for USWA offices should be permitted to receive "employer" funds. To the contrary, Sadlowski's prior campaign adopted stringent safeguards to prohibit the acceptance of "employer" funds as the attached memo indicates. While the District Court and the Court of Appeals in *Local 20* thought the considerations set forth in Professor Summers' Affidavit irrelevant to a determination whether the contributions in that case derived from employer sources within the meaning of Section 401(g), those considerations are nevertheless relevant to a determination of the effect of—as well as the justification for—the encroachment upon protected rights of speech and association inherent in operation of USWA's outsider rule, *Buckley* v. *Valeo*, 421 U.S. 1.

payments are established and approved by USWA insiders.

The opinion of the CCAC, however, underscores rather than obviates the need for declaratory and injunctive relief under the right-to-sue guarantee contained in Section 101(a)(4) of LMRDA. Apart from evincing a clear bias and desire to please the members of the "official family" who appointed them, the CCAC leaves firmly in tact the *in terrorem* effect of the "rule" on USWA insurgents who may seek the services of counsel to protect or vindicate their rights during an election campaign.

As we noted previously, Plaintiff Ed Sadlowski, Jr. was represented by undersigned counsel Joseph L. Rauh, Jr. in his effort to persuade the Secretary of Labor to initiate suit under Title IV of LMRDA to overturn the 1973 District 31 election, and thereafter, by intervening in the suit the Secretary filed. USWA has maintained in that litigation—even though it resulted in the entry of a consent order and a rerun election that Sadlowski won handily—that the hundreds of hours devoted by Sadlowski's counsel before the Department of Labor and in Court were to promote Sadlowski's candidacy and not to protect his rights. The CCAC opinion does nothing to allay the fears of USWA members and their supporters that similar representation in future elections will disqualify the candidate acepting such services and may even subject him or her to fine, suspension or expulsion.

Similarly, in the 1976-77 campaign for the USWA's principal International offices, attorney Rauh filed two pre-election suits and one post-election case. The first of these cases, as noted in Plaintiffs' Reply to USWA's Statement of Genuine Issues (¶ 29), involved the disbanding of the local union of which one of Sadlowski's running mates, Emilio Rodriguez, was a member. Suit was filed in the Central District of California to assure that Rodriguez's eligibility to be a candidate would not be affected

by the lifting of the local's charter. Assurances were made by USWA that the lifting of the local charter would not affect Rodriguez's eligibility, and the suit was thereafter voluntarily dismissed.[2]

A second suit was filed by Sadlowski and his running mates to neutralize the pro-"official family" *Steel Labor* newspaper and to gain access to vital polling information. A consent agreement was entered which provided candidates with the opportunity to review issues *Steel Labor* before publication and voice objection to partisan material. Further proceedings in that suit resulted in entry of an order directing USWA to provide candidates with policy information including the places and hours of voting in the various locals.

The post-election action was commenced in this Court contesting the adequacy of the Secretary of Labor's investigation of the 1977 election and his refusal to institute suit to invalidate the election. *Sadlowski* v. *Marshall* (C.A. No. 78-0250). USWA was not a party until it intervened as a Defendant. Summary Judgment was entered on behalf of the Secretary of Labor; Judge Gasch's lengthy opinion was subsequently affirmed by the Court of Appeals (—— F.2d ——) and *certiorari* was recently denied by the Supreme Court.

USWA states that two of the above cases were "frivolous" (without naming them in particular) and in its suit against the Association for Union Democracy (*McBride* v. *Rockefeller Family Fund*, (S.D.N.Y. No. 78 Civ. 1762), which was subsequently dismissed, it asserted that "All of this litigation related to the election and promoted the candidacy of members of the Sadlowski slate." (Complaint, ¶ 26, quoted at p. 37 of Plaintiffs' Initial Memorandum). Having adopted the USWA line almost in its

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[2] The CCAC opinion leaves USWA insiders totally in control. If they "knuckle under" in the face of litigation, which thereafter becomes moot, they can label the suit "frivolous" and attack the suing member's *bona fides* and prevent him from taking office.

entirety, the CCAC presumably would likewise view similar suits in the future as violating the rule. More importantly, however, by leaving open the possibility that a candidate's *bona fides* in pursuing administrative or legal remedies may be considered in applying the rule, the CCAC opinion will surely chill the exercise of a candidate-member's right to sue. As noted in Our Reply Memorandum, a member's *bona fides* cannot be second-guessed by the Union or even in court without chilling the right to sue:

> "The right to sue is something less than fully protected by the 'protection of the right to sue' section of the 'Bill of Rights of Members of Labor Organizations' if a member of a union is required to make a pre-suit determination that the union may not discipline him for bringing it because upon a post-suit examination of the matter it will appear to some union official or judge that the member's action was brought in good faith. . . ."
>
> "What we do say is that the freedom to sue is precious; that the winner in a lawsuit should not have the right to discipline the loser; that the potential suitor should not be subjected to the threat of such discipline. . . ."
>
> *Operating Engineers Local No. 3* v. *Burroughs*, 417 F.2d 370, 373 (C.A. 9, 1969).[3]

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[3] The Court in Lacey v. Freight Employees Local 667, 99 LRRM 2403, 2406-07 (W.D. Tenn., 1978) reached the same conclusion:

> "[T]he right to sue is a precious one and no member of a labor organization should be forced to decline to exercise that right out of fear that a retroactive examination of his legal action will result in discipline on the strength of their finding that his suit lacked good/faith motivation."

Accord: *Ryan* v. *IBEW*, 361 F.2d 942, 946 (C.A. 7, 1962); *Ross* v. *IBEW*, 544 F.2d 1022, 1024 (C.A. 9, 1962); *Phillips* v.

The Supreme Court reached this very same conclusion in determining whether a union could punish a member for filing NLRB charges against it when it is later determined that the member should have exhausted internal union remedies:

> "Any coercion used to discourage, retard, or defeat that access [to the NLRB] is beyond the legitimate interests of a labor organization.
>
> * * *
>
> The difficulty is that a member would have to guess what a court ultimately would hold. *If he guessed wrong* and filed the charge with the Board without exhausting internal union procedures, *he would have no recourse against the discipline of the union. That risk alone is likely to chill the exercise of a member's right* to a Board remedy and induce him to forgo his grievance or pursue a futile union procedure. That is the judgment of the Board; and we think it comports with the policy of the Act."
>
> *NLRB* v. *Industrial Union of Marine and Shipbuilding Workers*, 391 U.S. 418, 424-25 (1968). (Emphasis supplied).

In sum, the CCAC opinion reinforces Plaintiffs' contention that the "outsider rule" presents the candidate for USWA office with a Hobson's choice. He can forego utilizing nonmember legal representation and vindicate his rights and lose the election. Or, he can utilize the services of nonmember counsel, pursue available administrative and legal remedies, win the election and subsequently be disqualified because the CCAC found that his claims

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Int'l Assn. of Bridge Workers, 556 F.2d 939 (C.A. 9, 1977)). "[N]o matter how labeled," if the action "serves 'to limit the right' " to sue, it is "invalid."

and/or suits were unnecessary, "frivolous" or "promoted his candidacy." Plainly, if the right-to-sue means anything, it means that no union member should be forced to make this choice. Accordingly, the "outsider rule" should be declared of "no force and effect" under Section 101(b) of LMRDA (29 U.S.C. 411(b) because it violates USWA members' right to sue.

[Signatures Omitted in Printing]

The Findings of Fact and Conclusions of Law of the District Court are reprinted in the Appendix to the Petition for a Writ of Certiorari at 31a-37a. The Order of the District Court is reprinted in the Appendix to the Petition at 38a-40a.

APPENDIX B TO MOTION FOR PARTIAL STAY

1980 CONSTITUTION OF UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC

Campaign Contribution Administrative Committee

Sec. 27. No candidate (including a prospective candidate) for any position set forth in Article IV, Section 1, and supporter of a candidate may solicit or accept financial support, or any other direct or indirect support of any kind (except an individual's own volunteered personal time) from any non-member. For purposes of this Section, the term non-member means any person who is either not eligible for membership under Article III or not in good standing or any foundation, corporation or other entity whose funds are derived in whole or in part from any person not eligible for membership under Article III or not in good standing.

The International Executive Board shall adopt regulations, for incorporation into the International Union Elections Manual, as necessary to implement this provision and to assure conformity with the obligations prescribed in this Section. Such regulations shall include requirements for reporting by candidates and their supporters of information pertinent to administration of and compliance with this Section, with such frequency, not to exceed weekly, as the International Executive Board deems appropriate.

There is hereby created a Campaign Contribution Administrative Committee to administer and enforce this Section. This Committee shall consist of three persons, appointed by the International Executive Board, for a term to begin not later than May 1, 1979, and end on August 1, 1983, who shall be distinguished, impartial citizens who are not members of the International Union. If a Committee member dies or resigns, the International Executive Board shall appoint a replacement. A quorum

shall consist of two members of the Committee. The International President shall fix the compensation and expenses of the Committee members, and shall arrange for the provisions of supplies, services, and all other assistance required by the Committee. The Committee shall have the following powers.

(a) The Committee shall have the authority to contact any and all non-members who it feels may be providing, or attempting to provide, prohibited support to any candidate, and attempt by persuasion to convince such non-members to refrain from providing such support.

(b) The Committee shall have the power (i) to direct any candidate, or any supporter, to cease and desist from any course of conduct which the Committee believes breaches this Section or the regulations of the Internatinal Executive Board adopted pursuant to this Section, and (ii) to direct any candidate, supporter or non-member to take such corrective action as the Committee deems appropriate to cure the effects of any violation and/or assure that any improper conduct will not have an effect upon the election.

(c) The Committee shall receive and promptly review the information candidates and their supporters are required to file by the regulations of the International Executive Board and by such additional requirements as the Committee may establish. The Committee may require candidates and their supporters to report whatever additional information the Committee deems apropriate to perform its functions.

(d) In the event that a candidate, or a supporter of a candidate with that candidate's knowledge or acquiescence, willfully and substantially breaches the obligations proscribed in this Section, or the regulations adopted by the International Executive Board pursuant to this Section, the Committee shall, upon notice and hearing under such expedited conditions as the Committee deems ap-

propriate in the circumstances, have the power to declare such candidate disqualified, and to so notify the International Tellers.

(e) If the Committee in its sole discretion determines that legal proceedings are necessary for the enforcement of this Section 27, it may institute whatever legal proceedings it deems appropriate, in the name of the International Union. The Committee shall be the only party authorized to institute legal proceedings to enforce the provisions of this Section 27.

(f) The Committee may recommend to the International Executive Board that additions or amendments be made to the regulations adopted by the International Executive Board pursuant to this Section and shall have such other powers as the International Executive Board determines are necessary for the implementation of this Section or, if the International Executive Board deems it advisable, any other Section of Article V.

Any member who believes that another member is violating these provisions may file a complaint with the Committee. The Committee shall process that complaint in such a manner as it deems appropriate, and may adopt rules with respect to the filing and processing of member complaints.

With respect to any pre-election matters within its jurisdiction, decisions of the Committee shall be final and binding, and not subject to review by any tribunal within the Union.

The Campaign Contribution Administrative Committee shall have exclusive jurisdiction of all post-election contests to all or part of the election based upon the following grounds:

(1) Alleged violations of this Section 27;

(2) Alleged violations of any rules or regulations adopted pursuant to this Section 27; or

(3) Alleged violations of the prohibition (contained in the International Union Elections Manual adopted pursuant to Article V, Section 4) against the use of union or employer funds or facilities for campaign purposes.

A candidate who wishes to file a contest on any of the above grounds must, in order to perfect such contest, file the contest with the Campaign Contribution Administrative Committee within such time period and pursuant to such rules as the Committee shall establish. The Committee shall investigate such contests, make determinations on those contests and make a report of its determinations and recommendations to the International Executive Board in time to be considered by the International Executive Board prior to September 1 of the election year.

APPENDIX C TO MOTION FOR PARTIAL STAY

1980 UNITED STEELWORKERS OF AMERICA INTERNATIONAL UNION ELECTIONS MANUAL

II. REGULATIONS UNDER ARTICLE V, SECTION 27 OF THE USWA CONSTITUTION

1. Definitions

For purpose of Article V, Section 27,

A. "Candidate" means a member of the Union who takes action directed towards seeking election to the following positions in the International Union: President, Secretary, Treasurer, Vice President (Administration), Vice President (Human Affairs), National Director of Canada and District Director in each district, regardless of whether the member is a formally announced candidate.

B. "Non-Member" means any person who is either not eligible for membership under Article III of the USWA Constitution or not in good standing; any former USWA member (including retirees); or any foundation, corporation or other entity whose funds are derived in whole or in part from any non-member.

c. "Financial Support" means a direct or indirect contribution where the purpose, object or foreseeable effect of the support is to influence the election of a candidate. Financial support includes, but is not limited to:

1. Contributions of money, securities, or any material thing of value;

2. Payments to or subscription for fund raising events of any kind (e.g., raffles, dinners, beer or cocktail parties and so forth);

3. Discounts in the price or cost of goods or services, except to the extent that commercially established discounts are generally available to the customers of the supplier;

4. Extensions of credit, loans, and other similar forms of finance, except when obtained in the regular course of business of a commercial lending institution and on such terms and conditions as are regularly required by such institutions; and

5. The payment for the personal services of another person, or the use of buildings or office space, equipment or supplies, or advertisements through the media.

D. "To influence the election of a candidate" includes, but is not limited to, all traditional political forms of vote getting. Examples of such activities include press conferences, press releases, campaign speeches, design, production and distribution of campaign posters, flyers, leaflets, bumper stickers and buttons, and all other forms of campaign promotional activities which enhance or diminish a member's prospects for election.

E. "Slate" means two or more individuals seeking two or more of the positions named in Paragraph A of this Section (pages 87-88) who announce that they are running together or who, in whole or substantial part, combine campaign fund raising or campaign expenditures.

F. "Counsel" means the attorney to whom the Committee has delegated its legal and management functions.

2. Prohibited Support

A. Scope of the Prohibition

Article V, Section 27, prohibits the solicitation or acceptance of direct or indirect support from non-members for the purpose of influencing the election of a candidate. The prohibition includes the contribution of services of all kinds as well as the contribution of financial support.

The only exception to the prohibition of Section 27 is the performance of services by a non-member volunteer, rendered on the volunteer's personal free time, without compensation in any form by a non-member and without ac-

companying contributions of supplies or of services of non-member associates or staff who are compensated by a non-member for such services.

(1) Indirect Support

Section 27 prohibits the solicitation and acceptance of indirect as well as direct campaign contributions from non-members. Examples of indirect support from non-members would include, the contribution of cash to a member who in turn makes a contribution to a candidate; the donation of travel expenses, printing services, office supplies, office space, or of clerical, secretarial, or professional services used by a non-member in conjunction with his or her own volunteered service to a candidate; the distribution of election materials with the aid of a volunteer's paid staff; and the procuring of discounts.

(2) Credit and Financing Arrangements

The extension of credit to a candidate or to a candidate's supporters to purchase goods or services designed to influence the outcome of an International Union election is permissible only within the regular course of business of an enterprise so engaged, and only on the regular terms of credit offered by such businesses. The same limitations apply to the borrowing of money, credit, or collateral in any form from a non-member for use in support of candidacy.

(3) Obligation to Reject Offers of Prohibited Support

Section 27 extends to any form of solicitation or acceptance of prohibited support, whether direct or indirect. Acceptance of such support violates Section 27 whether or not the support was solicited. Accordingly, when prohibited support is contributed, there will be a presumption that it was accepted by the candidate or his or her supporters, unless they have taken affirmative steps in good faith to dissuade the non-member from providing such support and have taken action to correct the effects of the prohibited support.

In such cases where prohibited support has been contributed, it is the candidate's obligation to contact immediately the non-member contributor, reject the prohibited support, return the contribution, insist that such support be discontinued, and take whatever action on his own or her own, or as directed by the Committee, may be necessary to eliminate any impact on the election. Full reports must be made to the Committee promptly.

B. Contributions for Legal and Accounting Services

Section 27 does not prohibit the candidate's use of financial support or services from non-members to pay fees for legal or accounting services performed in assuring compliance with applicable election laws or in securing, defending, or clarifying legal rights of candidates. Contributions of this kind are permitted only to the extent that they are confined to these permissible objects. Activities which are designed to extract political gain from legal proceedings are subject to the support limitations of Section 27.

C. Committee's Remedial Responsibility

The Committee will use all available means to assure that the solicitation or acceptance of prohibited support does not affect the campaigning process or outcome of any Union election governed by the provisions of Article V, Section 27.

3. Recordkeeping and Standards for Handling Financial Contributions

A. Records of Contributions Other Than Fund Raising Events Described in Paragraph B below.

It is the responsibility of each candidate to maintain the following records with respect to all contributions other than those described below in Paragraph B:

- with respect to each contribution in excess of $5, the name, address and local union number of the contributor and the amount of the contribution;

- with respect to each contribution in excess of $1 but not more than $5, the name and local union number of the contributor and the amount of the contribution;

- with respect to contributions of $1 or less, the total amount of such contributions.

B. Cash Collections at Campaign Rallies, from Raffles and at Other Fund Raising Events

At campaign rallies, raffles and other fund raisers, candidates must give full notice that only members may contribute. A record must be kept of the amount of any contribution in excess of $5 made at a campaign rally or other fund raising event, and the name, address and local union number of the contributor. The same information must be recorded for all purchasers of raffle tickets regardless of the cost of the ticket. The amount of the contribution is the actual amount paid by the contributor regardless of the cost of the fund raising event to the candidate. Non-members may attend fundraising events as guests of members, but non-members may not pay for the admission ticket, make purchases or otherwise make contributions.

c. Verification of Contributors' Membership Status

It is the responsibility of the candidate to make certain that all contributions, whether in cash or by check, are made by persons who are members of the Union in good standing. The International Secretary will, upon request, provide prompt advice based on the Union's membership records.

4. Reporting Requirements

A. Reporting Dates

With respect to the election in 1981, each candidate or announced slate of candidates is required to file a report as described below on November 1 and December 1, 1980, February 2, March 2, April 1, April 15, April 29, May 14, May 21, and on June 15, 1981, and then no later than July 31, 1981. A slate of candidates must file its report as a slate instead of filing as individual candidates. Filing is accomplished by delivering the report to the Committee on or before the due date.

B. Contents

Each periodic report shall contain:

1. A list of each financial contribution exceeding $5 received by the candidate or by his or her supporters, the name, address, local union number of the contributor and the amount of the contribution.

2. The total number and amount of contributions being held pending verification of the status of the contributor.

3. A list of the time and place of each campaign rally or other fund raising event including, but not limited to, beer or cocktail parties, cash bars, and dinners, at which cash was collected, together with any written publicity of the event including announcements, the total amount of cash collected at the event; the total number of contributors; the total number in attendance at the event; the total cost incurred in conducting the event; and a list of each cash contribution in excess of $5 collected at each such event with the name, address and local union number of each such contributor.

4. A list of all raffles which includes a description of the raffle and the date conducted; the price of a ticket, the total amount of receipts from the raffle; the total

number of tickets purchased; and the name, address and local union number of each ticket purchaser of tickets in excess of $25.

5. The total expenditures incurred by the candidate, and a list of all persons or entities to whom expenditures have been made in an aggregate amount of $100 or more, together with the amount, date and purpose of each such expenditure and the address of the recipient.

6. A list of each loan made to the candidate or supporter, identifying the lender, the lender's address, the amount of the loan and the terms of repayment.

7. A list of each extension of credit for goods or services supplied to the candidate or supporter, identifying the source of the credit, the transaction with respect to which credit was conferred, and the terms of the credit.

8. A list of all volunteered time of non-members of twenty hours or more, the volunteer's name, address, employer and a brief description of the services provided.

The Committee may from time to time amend the requirements of information to be included in the reports as it deems appropriate.

C. Disclosure

Unless the Committee otherwise determines, all information contained in the reports of each candidate, except the identity of members whose cumulative contributions do not exceed $25, shall be disclosed upon request, to all of his or her opponents who are in compliance with these reporting requirements. The same information shall be disclosed to lawyers designated by the Union to handle matters connected with the election.

D. Reporting Periods

The first report must include all requested information retroactive to the first receipt of support, and the first expenditure, whether or not the candidate was at that

time an announced candidate, and must be current as of five (5) days before the date it is due to be filed. Each succeeding report must include all requested information not included in prior reports, and shall be current as of five (5) days before the date it is due to be filed.

E. Review and Investigation

Counsel will promplty review all reports and information received by the Committee and will investigate any matters which warrant investigation.

The opinion of the court of appeals is reprinted in the appendix to the petition for a writ of certiorari at 1a-30a.

Opposition

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No. 81-395

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

UNITED STEELWORKERS OF AMERICA,
Petitioner,

v.

EDWARD SADLOWSKI, JR., JOSEPH SAMARGIA, EDWARD SADLOWSKI, SR., LEONARD S. RUBENSTEIN, and JAMES MILLER,
Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

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No. 81-395

UNITED STEELWORKERS OF AMERICA,
Petitioner,

v.

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Respondents.

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents Edward Sadlowski, Jr., Joseph Samargia, Edward Sadlowski, Sr., Leonard S. Rubenstein and James Miller through undersigned counsel respectfully pray that the Petition for a Writ of Certiorari be denied.

OPINIONS BELOW

Contrary to the incorrect recitation in the Petition (p. 2), the opinions below were reported several months ago. The opinion of the District Court is published at 507 F.Supp. 623 (D.D.C. 1981). The opinion of the Court of Appeals is published at 645 F.2d 1114 (C.A.D.C. 1981).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to § 101(a)(2) quoted in the Petition (p. 2), this matter also involves, as both courts below made clear, §§ 101(a)(4) and 101(b) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 411(a)(4) and 411(b), neither of which is quoted in the Petition. § 101(a)(4) provides, in relevant part, as follows:

> "(4) Protection of the right to sue. No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator. . . ."

§ 101(b) provides as follows:

> "(b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect."

COUNTERSTATEMENT OF THE CASE

Following a series of elections within the United Steelworkers of America ("USWA") in which the union's hierarchy faced serious challenges by Chicago steelworker Edward Sadlowski, Jr. and the reform group within the union, USWA's "official family" [1] sought and

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[1] In connection with a suit by the Secretary of Labor to overturn a 1973 election in which Plaintiff Edward Sadlowski, Jr. had challenged an incumbent-backed candidate for the directorship of USWA's largest district, USWA's former President I. W. Abel gave a deposition in which he testified that the traditional practice of incumbent USWA officers and District Directors was financially and otherwise to support the re-election campaigns of

obtained the adoption of a rule which barred candidates for principal union offices from soliciting or receiving funds or anything of value from any non-member except a non-member's volunteered personal time.[2] Prior to adoption of the so-called "outsider rule" at the Union's 1978 Convention, USWA had never barred member candidates from receiving contributions or election assistance from family members, friends or others who were not union members. Nor has any other labor organization, either before or since, adopted a similar rule (Plaintiffs' Reply, ¶ 44).[3] The effect of the rule, as

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incumbent officers. Abel characterized the incumbent group as the "official family". (Request for Admissions to USWA, ¶ 1, Exhibit A to Request for Admissions, Abel Deposition, pp. 5-8).

[2] The entire text of the rule, which appears in Article V, Section 27 of the USWA Constitution, was printed as an appendix to the Court of Appeals opinion (Petition 27a-30a). In relevant part, the rule states as follows:

> No candidate (including a prospective candidate) for any position set forth in Article IV, Section 1, and supporter of a candidate may solicit or accept financial support, or any other direct or indirect support of any kind (except an individual's own volunteered personal time) from any non-member. For purposes of this Section, the term non-member means any person who is either not eligible for membership under Article III or not in good standing or any foundation, corporation or other entity whose funds are derived in whole or in part from any person not eligible for membership under Article III or not in good standing.

[3] USWA's recitation of facts bears no resemblance to the undisputed factual record as found by both courts below. USWA is incorrect in its assertions in footnote 1 of the Petition that its version of the facts is "virtually" undisputed and must be assumed to be true. As the courts below made clear, summary judgment was entered for Plaintiffs based upon the undisputed material facts contained in their summary judgment papers.

References herein to the undisputed facts are to paragraphs of Plaintiffs' Reply to Defendant's Statement of Genuine Issues, cited as "Plaintiffs' Reply" which was filed in the District Court and appended to Respondents' Brief filed in the Court of Appeals.

shown in greater detail below, was to strip insurgent candidates, such as Sadlowski and others, of access to the essential services of non-member counsel and other campaign resources while preserving the incumbents' access to massive campaign "contributions" from union staff. All four judges in the courts below recognized that the USWA rule was but a thinly veiled self-perpetuation device conceived and implemented by USWA's top officers in an effort to insulate themselves from any further meaningful electoral challenges. Thus, District Judge George L. Hart, Jr., correctly observed:

> "It seems to me that your constitutional provision would keep an ordinary member from ever becoming a viable candidate to start with and, if he can't become a viable candidate to start with, then it will be impossible to raise funds, to bring a lawsuit against the union, as I see it.
>
> * * *
>
> The union officers have an advantage in raising money from the union people directly under them who wouldn't dare not contribute to them if they asked them in most cases and who have an ability to take action, retaliatory action, against people who gave to somebody else and what not.
>
> And it may be that I don't have jurisdiction, but I declare, the provision in the constitution is outrageous to me" (Tr. pp. 25, 29).

These views were echoed by a unanimous Court of Appeals panel (Circuit Judges MacKinnon and Robb and District Judge Robinson):

> "In our view the outsider rule's blanket prohibition on outside contributions for traditional 'campaign purposes', . . . violates the rights of the candidate and his supporters to free speech and association as guaranteed by Section 101(a)(2) and *flies squarely in the face of the intent of the LMRDA to 'insure union democracy.'* . . .

> . . . . A candidate for union office cannot receive or solicit contributions from friends, relatives, Union members not in good standing, retired Union members, or well-wishers. The Union restrictions would not permit a candidate to receive a loan from his nonmember father, or a close friend, even if the loan were fully secured and carried a reasonable rate of interest. . . .
>
> . . . . *We cannot conceive of anything that would do more to inhibit union democracy than to prohibit insurgent candidates from receiving financial support from those outside sources that are not prohibited by the statute. . . .*" (Petition, 16a, 18a, 20a) (Emphasis added).[4]

The courts below found that the Steelworkers' rule violated both the right-to-sue provision and the freedom of expression and association embodied in the Bill of Rights for Union members contained in Title I of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 411(a)(4) and (a)(2). Accordingly, under Section 101(b) of the Act, which directs the courts to invalidate provisions of union constitutions which are inconsistent with the Bill of Rights guarantees, the courts below struck down the USWA rule in its entirety.

A. Background

USWA concedes in its Petition that its rule barring receipt of services and campaign contributions was a direct outgrowth of opposition by Edward Sadlowski, Jr. and union reform forces dating back to 1973 and the

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[4] The breadth of the rule is best illustrated by the claim of Edward Sadlowski, Sr., a plaintiff herein. Though the elder Sadlowski was a charter member of the USWA, remained a USWA member for thirty-two years prior to his retirement from the mills, and receives a pension, the terms of which are negotiated by USWA's officers, the rule would bar him from contributing to his own son's campaign.

1976-1977 hotly contested election campaign between Sadlowski and Lloyd McBride for the USWA presidency (Petition, pp. 4-5). According to the USWA tabulations in 1977, Sadlowski received 249,281 votes to McBride's 328,861; others on Sadlowski's slate of candidates also received nearly a quarter million votes (Petition, 3a).[5]

During the course of the 1976-77 election campaign—as a result of litigation[6]—the two slates exchanged lists of campaign contributors (Plaintiffs' Reply, ¶ 26). These reports revealed that the "official family" slate relied almost totally on money from incumbent officers and staff. As of early January 1977, the McBride campaign reported receiving $182,000, more than 90% of

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[5] At the time of the 1977 election, Sadlowski was the Director of the largest USWA District, District 31. Although counted out in the 1973 election for District Director in which he opposed the "official family" candidate, Sadlowski—represented by undersigned counsel, Joseph L. Rauh, Jr.,—challenged the election, persuaded the Secretary of Labor to sue to invalidate that election, intervened in the Secretary's suit, and ultimately won the supervised re-run election by a substantial margin despite significant "official family" financial support received by his opponent (Petition, 31a-32a; Plaintiffs' Reply ¶ 20).

[6] The Sadlowski slate was again represented by Mr. Rauh, who along with attorneys from the Association for Union Democracy instituted on behalf of the insurgent slate several legal actions and complaints to the Department of Labor (Petition, 32a). Like most insurgents, Sadlowski and his slate members did not have sufficient funds to pay counsel at his regular hourly rate for services rendered. In rendering legal services for Sadlowski both in connection with the 1973 election and the 1977 election, Mr. Rauh necessarily utilized his office, office supplies and office staff, and did so without payment of his regular rate and indeed, of any fee at all (Complaint, 19, 21; Sadlowski Affidavit, 2). This, the courts below recognized, would have been impossible under USWA's outsider rule which the union's regulation construed as prohibiting a non-member professional from volunteering his "facilities, secretarial or staff help, office space or any other aid" other than his own personal time (Exhibit A to Complaint).

which was obtained from "contributions" from officers and union staff (Plaintiffs' Reply, ¶ 27). Analysis of McBride's list of contributors further revealed that approximately one-third of the Steelworkers' staff contributed to the McBride campaign, that most of the incumbent District Directors "contributed" at least $1,000, that other staff ordinarily paid $500 each, that in some USWA Districts every single staff member contributed an equal amount, and that in several instances staff contributions to the McBride campaign were made in "installments." (Plaintiffs' Reply, ¶ 27).

Though three of his running mates were staff members, Sadlowski and his slate received less than $5,000 from the Union staff. (Plaintiffs' Reply, ¶ 25). Indeed, less than 3% of the Union's 1,500 officers and staff supported his candidacy. In order to mount a viable campaign among the USWA's more than 1.3 million members, Sadlowski relied upon contributions from rank and file members, and also from family, including his father and sisters, and from members of the general public through mail solicitations, raffles, receptions and dinners (Plaintiffs' Reply, ¶ 30). Despite the massive financial and electoral support the McBride slate received from the USWA staff, *Sadlowski and his slate* claimed a majority of the votes in "basic steel' and, as noted above, nearly a quarter million votes throughout the Union, and admittedly, *captured the largest vote ever cast within the USWA for insurgent challengers.* (Plaintiffs Reply, ¶ 32).[7]

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[7] Shortly after the 1977 election, the USWA through the very officers challenged by the Sadlowski slate and represented by the same counsel who have appeared in this case, sued the Association for Union Democracy ("AUD") and various foundations which had made grants to AUD to insure an honest election. The suit sought to enjoin all AUD activities in future USWA elections, including election-related litigation. *McBride* v. *Rockefeller Family Fund*, (S.D.N.Y., No. 78 Civ. 1862). McBride and his fellow USWA

After the election, McBride—through his running mates and the USWA staff—began soliciting "form" resolutions from pro-McBride USWA locals to be submitted to the USWA's 1978 Convention urging adoption of a rule barring candidates from receiving outside assistance.[8] Long before the USWA Convention convened, USWA's General Counsel Bernard Kleiman, who had recused himself from Sadlowski's election-related litigation so that he could support the McBride election effort, began preparing constitutional language to bar outsider assistance in future USWA elections (Plaintiffs' Reply,

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officers characterized the litigation which had occurred during and after the 1976-77 election campaign as politically motivated:

> "Several lawsuits were filed during the course of the 1977 election campaign. Defendant AUD represented Sadlowski slate members in a number of lawsuits initiated by them, and defended Sadlowski in a suit brought against him. *All of this litigation* related to the election and *promoted the candidacy of members of the Sadlowski slate.*" (Emphasis added) (Complaint ¶ 26).

The Complaint was subsequently dismissed, 101 LRRM 2576 (S.D.N.Y., 1979), which decision was affirmed by the Court of Appeals, 612 F.2d 34 (C.A. 2, 1980), *cert. denied*, 445 U.S. 951.

[8] In response to USWA's assertion that the large number of Convention resolutions indicated a groundswell of concern (Memorandum of USWA in support of Motion to Dismiss, p. 7), Plaintiffs pointed out that the resolutions were "form" submissions, that all but one came from three pro-McBride USWA Districts, that more than 95% of the Locals who submitted these form resolutions had voted for McBride, and that no resolutions on the issue came from any of the large USWA Districts in Chicago, the West Coast or the "Steel Valley" in Pittsburgh (Olingy Affidavit, ¶ 6-8). Ultimately, USWA conceded, through a declaration filed by Lynn Williams, McBride's running mate, that the "outpouring" of resolutions from his home district "no doubt" resulted from his conversations" with District 6 Director Stu Cook (Williams Declaration, ¶ 7). Williams further admitted that the process of preparing and soliciting form resolutions in the other two USWA Districts "was similar to the process I have described with respect to District 6." (Williams Declaration, ¶ 9).

¶ 39). The rule drafted by Kleiman was presented to the USWA Convention by its Constitution Committee, the Chairman and Secretary of which were both running mates of McBride (Plaintiffs' Reply, ¶ 41). The Chairman of the McBride Team Campaign Committee, Bruce Thrasher, and McBride himself both spoke at considerable length to the Convention urging adoption of the "outsider" rule (Plaintiffs' Reply, ¶ 42). Over the objections of Sadlowski's successor as District Director of District 31, James Balanoff, who argued that the rule was illegal and unconstitutional, McBride declared that the rule and its implementing regulations had been adopted (Williams Affidavit, App. C; Balanoff Aff., ¶ 12).

B. The Proceedings Below

Plaintiffs challenged USWA's rule as violating the First Amendment's protection of free expression and association, the National Labor Relations Act, and LMRDA. During the pendency of the parties' summary judgment motions, USWA counsel sought to avoid invalidation of the rule as an infringement of the right-to-sue guarantee contained in § 101(a)(4) by obtaining an "advisory ruling" from USWA's Campaign Contribution Administrative Committee which had been handpicked by the USWA hierarchy to administer the rule.[9]

[9] Despite the clear language of the rule barring outside support of "any kind" and the rule's plain intent to strip Sadlowski (and other insurgents) of access to counsel, the CCAC attempted to distinguish support for election-related litigation activity from other campaign support. Its effort was oblivious to the terms of the rule and, at any rate, concluded by leaving the rule's application to election-related litigation in doubt. Thus, on the one hand, the CCAC stated that "actions of a candidate seeking political office are qualitatively distinguishable from actions at law"; on the other hand, it remarked that its ruling was made "in general terms in response to a broad inquiry," which CCAC acknowledged, could be "misconstrued or distorted." Thus, rather than squarely stating that nonmember funds and services could be accepted by candidates for use

The District Court, in invalidating the rule under § 101 (a) (4), found the CCAC's opinion contrary to the "clear language of the rule and its implementing regulations"; found that the CCAC opinion "could result in confusion and violation of its terms by unschooled members who are required to comply with it"; and noted that the CCAC ruling "leaves in doubt whether member-candidates can be disqualified or disciplined for accepting funds, retaining counsel and bringing suit which the Committee or the Union later determined was not *bona fide*." (Petition 33a-34a).[10]

The District Court rejected USWA's contention, raised by its Rule 59 request for reconsideration, that the rule's violation of § 101(a) (4) should be isolated from the remainder of the rule:

> "The unlawful effects of the rule cannot be separated from the rule as a whole. Because the application of the rule to litigation support is not 'functionally independent' from the balance of the rule, as is obvious from its text and because the confusion on what can and cannot be done under the rule will have a chilling effect on guaranteed rights of member candidates, the entire rule must be declared invalid and of no force and effect, pursuant to Section 101(b) of LMRDA (29 U.S.C. 411(b))." (Petition, 36a).

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in litigation without fear of disqualification or union discipline, the CCAC stated that it would "deal with these questions whenever they arise on a case-by-case basis." Moreover, the CCAC expressly declined to decide whether a member-candidate could be disqualified if he brought a suit which the Committee later found was not "*bona fide*," stating that the Committee would "look at such a case on its facts if it arises."

[10] Both the District Court and the Court of Appeals found that solicitation or receipt of outsider funds or services would not only result in disqualification of the candidate but would also subject him to fines, suspension or expulsion from union membership. (Petition, 32a, 19a).

Accordingly, in its Order of January 30, 1981, the District Court declared the outsider rule to be inconsistent with the right-to-sue guarantee, and pursuant to Section 101(b) of LMRDA enjoined USWA from implementing or enforcing it. (Petition 38a-40a).

Contrary to the Petition's intimation (Petition, 7, 9), the District Court did not view the rule, apart from its impingement upon the right to sue, as nonobjectionable. To the contrary, the District Court referred to the entire provision as "outrageous" and in its Order stated that the complete ban on non-member contributions "too broadly trenches upon protected freedoms of expression and association and therefore, would violate the guarantees contained in the First Amendment if state action were present here. . . ." (Petition, 39a).

The Court of Appeals affirmed the District Court's finding that the rule violated § 101(a)(4) of LMRDA [11]

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[11] The Court of Appeals, in addition to stressing the inconsistency of the rule's clear language with the terms of § 101(a)(4) and the ambiguity of the CCAC opinion, felt "even greater concern" based on a provision in USWA's Elections Manual promulgated subsequent to the CCAC opinion. The Manual, though stating that the rule does not prohibit a candidate's use of outsider support to pay legal fees in assuring compliance with applicable election laws or in securing, defending, or clarifying legal rights of candidates, proceeded to state: "Activities which are designed to extract political gain from legal proceedings are subject to the support limitations of Section 27." The Court of Appeals recited:

> "This broad limitation on the right to sue subsumes whatever limit resulted from the Administrative Committee's hedging on the question whether a lawsuit 'motivated solely by a desire to promote a candidate's political campaign,' which is 'not a *bona fide* attempt to secure an adjudication of legal rights,' would be subject to the contribution restrictions. Under the regulation a candidate could not receive outside assistance to finance a lawsuit even if brought in good faith and not motivated solely by a desire to advance his campaign if it was designed to extract political gain. One would go a far distance to find *any* lawsuit brought during the heat of a campaign that was not designed to extract political gain." (Petition, 10a).

and the District Court's invalidation of the rule in its entirety, but did so because it found that the rule, in addition to violating the right to sue, also violated rights of expression and association protected by § 101(a)(2). Thus, contrary to the Petition, the Court of Appeals found it unnecessary to resolve the parties' dispute over whether the District Court was correct in invalidating the rule in its entirety based on the § 101(a)(4) violation. Similarly, because it invalidated the rule in its entirety on statutory grounds, the Court of Appeals found it unnecessary to determine whether the necessary "state action" was present, and therefore, whether the "outsider" rule violated the First Amendment.

REASONS WHY THE WRIT SHOULD BE DENIED

1. The Court of Appeals' invalidation of the rule in its entirety under § 101(a)(2) was correct. The Court of Appeals' invalidation of USWA's blanket ban on non-member campaign assistance as violating protected freedoms of expression and association is an unexceptional and proper application of §§ 101(a)(2) and 101(b) of LMRDA and is wholly consistent with this Court's prior decisions.[12] The Court of Appeals' reliance upon First Amendment authorities for its interpretation of the analogous guarantees of § 101(a)(2) is supported by decisions routinely recognizing the protections embodied in LMRDA's Bill of Rights as parallel to, and even broader than, those of the First Amendment, *Salzhandler* v. *Caputo*, 316 F.2d 445, 450 (C.A. 2, 1963), *cert. denied*, 375 U.S. 946.[13] The broad interpretation given to Sec-

[12] USWA argues that the decision of the Court of Appeals was incorrect, but significantly does so without asserting conflict with even a single decision of any other court of appeals or other federal court.

[13] The free speech protection under § 101(a)(2) since the very earliest days of LMRDA has been held to extend to union member communications addressed to persons outside the union and to

tion 101(a)(2) in the seminal *Salzhandler* decision and in *Fulton Lodge No. 2* v. *Nix*, has been endorsed by this Court. See *Hall* v. *Cole*, 412 U.S. 1, 7-8 (1973).

In *Ostrowski* v. *Local 1-2, Utility Workers of America*, 104 LRRM 2343 (S.D.N.Y. 1980)—factually, the closest case to this one—the court properly applied this Court's decisions and held that § 101(a)(2)'s protection of free speech embodies protection of association between union members and non-members. While USWA insists that the language of § 101(a)(2) does not specifically mention freedom of association with regard to campaign financing or otherwise (Petition, 18), the same observation is equally true of the First Amendment. As stressed by the *Ostrowski* court and by the Court of Appeals here, freedom of association has been recognized as inherent in the First Amendment's protection of freedom of expression because its "existence is necessary in making the express guarantees fully meaningful." *Griswold* v. *Connecticut*, 381 U.S. 479, 483 (1965) (Petition 15a). This Court's decision in *Buckley* v. *Valeo*, 424 U.S. 1 (1976), established the principle that the making and receipt of campaign contributions is every bit as protected under the First Amendment as other forms of expression and association. In *Abood* v. *Detroit Bd. of Educ.*, 431 U.S. 209, 234 (1977), this Court held that the *Buckley* principle applies in the union context so as to forbid unions from coercing represented employees

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the public at large, *Graham* v. *Soloner*, 220 F. Supp. 711, 714 (E.D.Pa. 1963) (rejects contention that § 101(a)(2)'s protection extends to expression "only as among union members themselves, and gives no protection from discipline for public expression"); *Fulton Lodge No. 2* v. *Nix*, 415 F.2d 212, 215, 219, (C.A. 5, 1969) (rejects argument that member's statements were 'extraunion' and consequently unprotected by the free speech provisions of the LMRDA); *Yablonski* v. *United Mine Workers of America*, 71 LRRM 3041 (D.D.C. 1969) (member's "public announcement" of candidacy held protected from reprisal by § 101(a)(2)).

with respect to such contributions.[14] The Court of Appeals' holding here that such contributions also enjoy protection as expression and association under § 101(a)(2) is certainly not novel on any question of law even though USWA's rule at bar is unprecedented. The invalidation of such a one-of-a-kind rule hardly engenders any controversy of national importance commanding this Court's review.[15]

The Court of Appeals' invalidation of USWA's outsider rule under §§ 101(a)(2) and 101(b) rests on the rule's imposition of restrictions which would indisputably be held unconstitutional if imposed in connection

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[14] USWA's argument that *Buckley's* holding is irrelevant in the union context (Petition 23) is ironic given its heavy reliance upon the Court's decision last term in *Democratic Party* v. *LaFollette*, —— U.S. ——, 49 U.S.L.W. 4178 (1981), which also arose from a public election context.

Buckley's application in the union context was confirmed by *Auto Workers* v. *National Right to Work*, 192 U.S. App. D.C. 23, 590 F.2d 1139 (1978). Based on *Buckley*, the Court articulated a constitutionally-required construction of § 101(a)(4) of LMRDA so as to uphold association in the form of monetary support, between union members and non-members, for common pursuit of *bona fide*, independent legal aid activity.

[15] Apparently recognizing that this case meets none of the traditional criteria for the granting of *certiorari*, USWA has solicited AFL-CIO counsel to join in USWA's Petition presumably to create the impression that important issues are involved. Notably, however, neither USWA nor AFL-CIO counsel asserts that any other labor organizations have rules even remotely similar to the "outsider" rule which are of questionable validity by virtue of the decision below.

Nor is the AFL-CIO an objective, distinterested observer of this case or of the participants in the Sadlowski-McBride election which preceded adoption of the "outsider rule". Of the 10% of the McBride's slate's campaign contributions which came from persons other than USWA officers and staff, a substantial portion was given by AFL-CIO President Lane Kirkland and other high union officials in the AFL-CIO. (Plaintiffs' Reply, ¶ 28).

with a public election.[16] USWA's rule can best be analogized to a statute barring campaign contributions to election campaigns—whether in congressional disrticts, states, or municipalities—in which the contributor is not a constituent. We submit that such a comparable restriction—barring citizens of New York and New Jersey, for example, from contributing to a Pennsylvania senatorial or legislative campaign—would plainly violate the First Amendment and that USWA's rule abridges protected expression and association in identical fashion.

USWA's arguments against invalidation of its rule consist of a succession of "straw men". Thus, the Court of Appeals surely did not read "§ 101(a)(2) as a grant to the federal courts of a *roving commission* to invalidate union rules the judiciary finds inconsistent with its notions of 'union democracy'" (Petition, 14, 20-23); to the contrary, the touchstone of its holding is the rule's infringement upon freedoms of expression and association embodied in § 101(a)(2). Rather than suggesting any "roving commission", the Court of Appeals predicated invalidation of the rule on § 101(b)'s declaration—studiously ignored by USWA—that "any provision of the constitution and bylaws of any labor organization . . . inconsistent with the provisions of this section shall be of no force or effect." Nor did the Court of Appeals, as USWA asserts, set up Title I as a "second

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[16] USWA continues to press the plainly incorrect assertion that its rule barring receipt of contributions from non-USWA members parallels the prohibition in 2 U.S.C. 441e against certain contributions to federal campaigns (Petition, 23, n.37). USWA ignores that § 441e bars contributions only from those foreign nationals who do not have U.S. resident status and, accordingly, do not enjoy First Amendment protection in any event, *Kwong Hai Chew* v. *Colding*, 344 U.S. 590, 596, n.5 (1953); *Bridges* v. *Wixon*, 326 U.S. 135, 148 (1945) (freedom of speech and of press is accorded *aliens residing in this country.*") (Emphasis added). Contrary to USWA's intimation, Congress did not bar contributions from those resident aliens who, under *Bridges*, enjoy First Amendment protection.

code of elections to supplement, or supplant, the election code established in Title IV." (Petition, 19). The Petition itself recognizes that while Congress dealt with union elections in Title IV, Title I's protections apply "*both within the electoral context established by Title IV and in all other aspects of union affairs.*" (Emphasis added) (id). Indeed, rather than establishing Title I or any part thereof as a separate election code, the Court of Appeals specifically found the history of § 401(g) and Title IV as a whole to support its conclusion that the free speech guarantee of Title I prohibits a complete ban on outside financial contributions such as USWA's rule (Petition, 21a-23a). By so construing § 101(a)(2), the Court of Appeals properly avoided serious constitutional questions, resolution of which would otherwise have been required, see Section 4, *infra.*

* * * *

Contrary to USWA's contention (Petition, 24-26), the Court of Appeals' invalidation under § 101(a)(2) of USWA's ban on non-member campaign contributions in no way violates USWA's freedom of association under the First Amendment. The Court of Appeals (Petition, 23a-24a, n.19) correctly recognized that USWA's reliance upon *Democratic Party* v. *LaFollette*, —— U.S. ——, 49 U.S.L.W. 4178 (1981), was plainly misplaced:

> "The Union also contends that the recent decision of the Supreme Court in *Democratic Party* v. *LaFollette*, 49 U.S.L.W. 4178 (Feb. 25, 1981), supports the validity of Section 27. We disagree. That decision upheld a rule of the Democratic Party that only voters who publicly recorded their preference for the Democratic Party could vote in the selection process for delegates to the national convention, against a Wisconsin law that permitted *any* voter to vote in a state election which purported to bind delegates to the Democratic National Convention in their votes on presidential candidates. *The decision in*

> *Democratic Party is inapposite here. It frees elected delegates from being required at the National Convention to vote the preference for president expressed in an election which was not limited to publicly recorded Democrats, but in no way restricts any candidate for delegate from receiving financial support from independents and even from members of other parties.*" (Emphasis added).

USWA's dispute with the Court of Appeals' treatment of *Democratic Party* rests on a transparent play on words. Thus, while the Petition characterizes the ban as an attempt by USWA and its members to "limit *control* over their decisions" (Petition, 25) (emphasis added) to USWA members, the campaign financing which USWA wants to prohibit is in reality fully-protected expression and association, *Buckley*, *supra*, which does not in any way "control" USWA members in their choice of officers. *Democratic Party* itself made clear that the Party's freedom of association would in no way have been violated by a *nonbinding*, primary in which non-Democrats, though allowed to express an advisory presidential preference, could not have their votes share in the Party's candidate selection. *A fortiori*, USWA's freedom of association is not violated by merely upholding a candidate's right to receive non-member campaign contributions, for regardless of receipt of such contributions, the determination of USWA's selection of officers rests exclusively with votes cast only by USWA members.[17]

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[17] We are puzzled by USWA's assertion (Petition 22, n. 36) that Congress, in enacting Title VII of the Civil Rights Act of 1964, rejected "a proposal to prohibit discrimination by unions in admitting members" and therefore could not have contemplated the result reached by the Court of Appeals here. Title VII *plainly* and *specifically does* set forth precisely such a prohibition: "It shall be an unlawful employment practice for a labor organization—(1) to exclude . . . from its membership . . . any individual because of his race, color, religion, sex or national origin." 42 U.S.C. 2000e-2(c)(1). Title VII's prohibition, combined with § 101(a)(1) of

2. USWA apparently concedes that the outsider contribution rule violates the LMRDA right-to-sue provision embodied in § 101(a)(4) (Petition, 5a-10a). The Petition in no way disputes the Court of Appeals' conclusion that:

> "The outsider rule in Section 27 on its face clearly violates the rights of union members protected by the right to sue guarantee of the LMRDA. The Union's attempts to construe the rule against its plain meaning have been unpersuasive." (10a).[18]

USWA in its Petition (p. 9) incorrectly asserts that the Court of Appeals "indicated that were the rule defective only insofar as it applied to contributions for litigation (as the district court had held), the sweeping injunction issued by the district court would be inappropriate." In fact, the Court of Appeals indicated no such thing. Finding the rule's invalidation in its entirety necessitated by

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LMRDA (guaranteeing to all union members an equal vote), is a governmental dictate—going far beyond the decision of the Court of Appeals here—that particular persons be admitted into membership and be allowed fully to participate in the control of the union's election process. Yet, we hardly believe that this Court's decision in *Democratic Party* v. *LaFollette* would support a serious constitutional challenge to these statutory provisions as violating the union's freedom of association. As stated, disapproval of USWA's ban on non-member expression in no way implicates USWA's freedom of association in any event.

[18] The District Court's conclusion, affirmed by the Court of Appeals, that the outsider rule was inconsistent with § 101(a)(4)'s right-to-sue guarantee was virtually assured in light of this Court's broad construction of that section of the Act in *NLRB* v. *Industrial Union of Marine & Shipbuilding Workers*, 391 U.S. 418, 424 (1968) ("Any coercion used to discourage, retard or defeat that access [to the courts and administrative agencies] is beyond the legitimate interests of a labor organization.")

the § 101(a)(2) violation, the Court naturally refrained from resolving the dispute as to what remedy was appropriate for the rule's violation of § 101(a)(4).

In any event, the District Court was correct in refusing USWA's request that the Court, in effect, redraft the challenged rule by inserting an express exclusion of application to lawsuits. USWA's request was predicated on *United States* v. *Jackson*, 390 U.S. 570, 585 (1968) (". . . the invalid part may be dropped if what is left is fully operative as a law"); the District Court rightly determined, however, from the text of the rule itself, that the rule's application to litigation activity was not "functionally independent" from the remainder of the rule and that it would not be possible simply to strike out a word, phrase, sentence or paragraph so as to permit some portion of the rule to survive. In line with "long established principles of federal law . . . [which] dictate against courts inserting limitations in order to rescue otherwise invalid statutes", *Roe* v. *Casey*, 623 F.2d 829, 837-38 (C.A. 3, 1980), *United States* v. *Reese*, 92 U.S. 214, 221 (1879), the District Court appropriately rejected USWA's request. Accordingly, the remedy directed by the District Court based on its finding of a § 101(a)(4) violation, was correct even apart from the § 101(a)(2) violation recognized by the Court of Appeals as an alternative basis for invalidation of the rule in its entirety.

3. Invalidation of the rule would, if there were no § 101(a)(2) violation, be required under the First Amendment. The District Court declared that USWA's rule too broadly trenches upon freedoms of expression and association and would violate the First Amendment were state action present. The District Court believed that a finding of state action was foreclosed by this

Court's decision in *United Steelworkers of America* v. *Weber*, 443 U.S. 193 (1979) (Petition 39a). In *Weber*, however, no constitutional claim was stated and no analysis regarding the presence of "state action" was made. This Court's single sentence by way of introduction, on which the District Court focused, would in no way foreclose such analysis here. The Court in *Weber* said only:

> "Since the Kaiser-USWA plan does not involve state action, this case does not present an *alleged* violation of the Equal Protection Clause of the Constitution." 443 U.S. at 200. (Emphasis added).

In this case, such analysis would reveal "state action" on at least three alternative theories.

First, Congress has endowed labor unions with extraordinary authority. It has made unions the exclusive representative of the employees for whom they bargain whether the employee desires such representation or not. *J. I. Case Co.* v. *National Labor Relations Board*, 321 U.S. 332 (1944). It has authorized unions to enter into collective bargaining agreements under which employees must pay dues to the union whether the employee desires to make such payments or not. *National Labor Relations Board* v. *General Motors Corp.*, 373 U.S. 734 (1963). Such authority is governmental in nature; indeed, this Court stated in *Steele* v. *Louisville & N.R.R.*, 323 U.S. 192 (1944), that the bargaining ". . . representative is clothed with power not unlike that of a legislature which is subject to constitutional limitations. . . ." 323 U.S. at 198, see *International Ass'n of Machinists* v. *Street*, 367 U.S. 740 (1961), *Abood*, *supra*, 431 U.S. at 226, 232.

Second, Title IV of LMRDA commands compliance by candidates with specific election regulations and also

with the Constitution and By-Laws of the particular union, § 401(e), 29 U.S.C. 481(e), and assigns to the Secretary of Labor the exclusive prerogative of bringing suit to set aside union elections based, not only upon violations of the specific regulations, but also of the Union Constitution and By-Laws, § 402, 29 U.S.C. 482. Such legislation giving coercive effect to rules of private bodies is an obvious basis for applying constitutional restrictions to rules adopted pursuant to such a statute, see *Note, State Action: Theories for Applying Constitutional Restrictions to Private Activity*, 74 Colum. L. Rev. 656, 663-66, n. 45 (1974); *Boman* v. *Birmingham Transit Co.*, 280 F.2d 531 (C.A. 5, 1960); *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163, 177-79 (1972).

Finally, under LMRDA, the Secretary of Labor and the unions are engaged in joint participation in regulation of union elections so as to require a finding of state action pursuant to *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961). Thus, unions are required by LMRDA to adopt Constitutions and are empowered to make election rules which Title IV clothes with the force and effect of law; and unions are assigned full responsibility in the first instance for seeing to compliance both with their own rules and the specified § 401 standards. The union has exclusive regulatory responsibility over post-election complaints for three calendar months to the preclusion even of receipt by the Secretary of such complaints during that period. The interdependence of the Secretary and the unions in the Title IV regulatory scheme was further heightened by this Court's decision in *Hodgson* v. *L.U. 6799, United Steelworkers of America*, 403 U.S. 333 (1971), holding that the Secretary's Title IV suits can include only grounds which the union in its regulatory capacity had an opportunity to resolve. In *L.U. 6799*, this Court declared that

the Act not only seeks to foster, but also *relies upon* union self-regulatory action so as to "avoid unnecessary expenditure of the limited resources of the Secretary of Labor." 403 U.S. at 339. Indeed, in *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6*, 391 U.S. 492, 498-99 (1968), the Court declared that "Congress *emphatically gave unions the primary responsibility for enforcing compliance* with the Act . . ." and "also settled enforcement authority on the Secretary of Labor to insure that serious violations would not go unremedied and the public interest go unvindicated." (Emphasis added). The relation between the union and the Secretary, is thus marked by joint participation of the Secretary and the unions at every step of the regulatory process and is every bit as "symbiotic" as that recognized as a basis for finding state involvement in the private action in *Burton*.

Respondents believe that affirmance of the order invalidating the Steelworkers' outsider rule on First Amendment grounds would necessarily follow if invalidation of the rule on statutory grounds is not sustained, and they will surely advance those arguments as an alternative basis for affirmance if that becomes necessary. However, since the Petition presents none of the grounds recognized by Rule 17.1 for granting *certiorari* and the decision of the Court of Appeals was clearly correct, we submit that this Court can avoid passing upon these difficult constitutional issues simply by denying the writ.

CONCLUSION

The Court of Appeals' decision is wholly consistent with the decisions of this Court and other federal courts. Petitioner has not asserted a circuit conflict and there is none. The Steelworkers' outsider rule is the only one of its kind ever adopted by any labor organization. Be cause its invalidation by the lower courts is fully in accord with Congressional policy, there are no important federal questions involved which should be settled by this Court. Accordingly, the Petition should be denied.

Respectfully submitted,

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No. 81-395

IN THE
Supreme Court of the United States
OCTOBER TERM, 1981

UNITED STEELWORKERS OF AMERICA,
Petitioner,
v.
EDWARD SADLOWSKI, JR., JOSEPH SAMARGIA, EDWARD SADLOWSKI, SR., LEONARD S. RUBENSTEIN, and JAMES MILLER,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

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1. The Practical Importance Of This Case

Respondents note repeatedly that no other union has adopted a ban on outsider contributions (Opp. 3, 14 n. 15, 23), and from this they argue that the decision below is of no practical significance to the labor movement (*id.* 14 n. 15). But USWA did not have such a ban either, until it suffered the first "outsider" invasion ever experienced by an AFL-CIO union (Pet. 4-6). During USWA's 1977 election, George Meany, then President of the AFL-CIO, who had "never uttered an opinion about any election in any constituent union of the AFL-

CIO" concluded that "events in the Steelworkers election 'make it impossible for me to remain silent at this time.'" Meany found "deeply disturbing" the involvement of "people outside the labor movement—businessmen, academics and professional people" in USWA's election, and warned that this represented "an effort to control [unions'] policies and program by monied interests outside the union." Williams Aff. Ex. D. These fears were also voiced at that time by A. Philip Randolph, then a retired Vice President of the AFL-CIO (*ibid*), and Albert Shanker, then and now President of the American Federation of Teachers (*id.*, Ex. E). AFL-CIO's support of this petition reflects the labor movement's general concern over the threat posed by outside financial involvement in union elections.

The decision below, rendered by the court most likely to sit in judgment on union rules banning acceptance of non-member contributions,[1] has effectively chilled any prospect that other unions, either in anticipation of or in response to similar outsider invasions, will adopt such bans. That decision, therefore, has rendered the labor movement helpless to resist the efforts of non-labor interests to obtain a financial hold over those elected to national union office.

2. The Facts

Respondent's Opposition states that "USWA's recitation of facts bears no resemblance to the undisputed factual record as found by both courts below." (Opp. 3, n. 3). Suffice it to say that every single fact recited

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[1] Under § 102 of the LMRDA, 29 U.S.C. § 412, an action alleging a violation of Title I of the LMRDA may be brought, *inter alia*, in the district court where the union's headquarters is located. Most of the large unions in the United States have their headquarters in the District of Columbia.

in the Petition is supported by the evidentiary source cited for it in the Petition, and in the posture in which this case is before this Court (on review of a grant of summary judgment to respondents) each of those facts must be assumed to be true. By contrast, the supposed "facts" recited in the Opposition were in every material instance controverted by evidence submitted by USWA, and thus *cannot* be accepted as true in the present posture of the case. (In an appendix bound herewith, we describe the state of the record on the "facts" recited in the Opposition.)[2]

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[2] Nor did the courts below accept respondents' version of the facts, as the Opposition wrongly suggests. Neither the district court nor the court of appeals said that USWA's rules was "a thinly veiled self-perpetuation device conceived and implemented by USWA's top officers in an effort to insulate themselves from any further meaningful electoral challenges" (Opp. 4). Indeed, neither court made *any* findings as to the motives of USWA's top officers, nor as to the motives of the 4,227 delegates who voted overwhelmingly to adopt the rule.

Respondents quote a statement made by the district judge early in the hearing on the summary judgment motions that staff employees "wouldn't dare not contribute to [the incumbents]" and that the incumbents "have an ability to take action, retaliatory action, against people who gave to someone else" (Opp. 4). But subsequently in the hearing the judge was informed of the undisputed record evidence showing that in USWA staff employees have contractual job protection which enables them to support whomever they choose without fear of retaliation, and that in fact staff employees regularly oppose incumbent officers in USWA elections, often successfully (Tr. of 1/23/81 Hearing, pp. 44-46; see also Pet. 4 n. 2, 5 n. 5, 11-12 n. 8, and the appendix to this reply brief at 1a.) The findings entered by the district court following the hearing did not repeat the earlier erroneous statements quoted by respondents; and those statements are additionally refuted by respondents' own description that only "approximately one-third of the Steelworkers' staff contributed to the McBride campaign," Opp. 7—which had the support of the then-incumbent officers of USWA.

Of greatest significance to this Court's consideration of the Petition, respondents do not dispute (indeed they implicitly concede, Opp. 2-3) the following portion of our Statement:

> The first USWA Constitutional Convention after the 1977 election was held in 1978. That convention was attended by 4,227 delegates elected by the members of USWA's affiliated locals to represent the local membership at the convention. Those delegates, after debating the issue of outsider contributions, decided, by a margin of approximately 10 to 1, to adopt a constitutional provision prohibiting candidates for USWA International office from accepting contributions from non-members. [Pet. 6, footnote omitted].

The record on this point is undisputed—respondents introduced no evidence purporting to challenge USWA's evidence that the ban on outsider contributions was the overwhelming choice of USWA's membership.

3. The Meaning of § 101(a)(2)

Respondents argue that § 101(a)(2) has the same meaning as the First Amendment, stating:

> While . . . the language of § 101(a)(2) does not specifically mention freedom of association with regard to campaign financing or otherwise . . ., the same observation is equally true of the First Amendment. [Opp. 13].

Respondents overlook that § 101(a)(2), unlike the First Amendment, *does* "specifically mention freedom of association," and in doing so defines the limit of the associational right conferred:

> Every member of any labor organization shall have the right *to meet* and assemble freely *with other members*; . . . [emphasis added].

At the very least, that statutory language cautions against the lower court's expansive reading of the section

as conferring an associational right with *non-members*, particularly as the legislative history weighs so heavily against that construction. Pet. 15-22.

Respondents note that lower courts have construed the *succeeding* phrase of § 101(a)(2)—conferring a right upon members "to express any views, arguments or opinions"—as not limited to expressions addressed to union members (Opp. 12-13, n. 13). There is a good reason for those holdings: Congress deliberately amended the bill prior to enactment to remove the limitation on the right of *expression* that would have made the section's protection applicable only to communications to union members. See *Fulton Lodge No. 2 v. Nix*, 415 F.2d 212, 218 n. 15 (5th Cir. 1969). No similar amendment was made with respect to the right of *association*. Section 101(a)(2) thus contains a right of association expressly limited to union members, and a right of expression not so limited.

The lone case cited by respondents as allegedly supporting the construction of § 101(a)(2) through analogy to the First Amendment is *Salzhandler v. Caputo*, 316 F.2d 445 (2nd Cir. 1963), *cert. denied*, 375 U.S. 946, characterized by respondents as "routinely recognizing the protections embodied in LMRDA's Bill of Rights as parallel to, and even broader than, those of the First Amendment" (Opp. 12). But *Salzhandler's* only mention of the First Amendment was an explicit rejection of its applicability to the question of statutory construction before the court in that case: "The analogy to the First Amendment is not convincing." 316 F.2d at 449-450.[3]

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[3] The issue in *Salzhandler* was whether § 101(a)(2) protects libelous utterances. The *union* argued that as such utterances are not protected by the First Amendment, they should be deemed unprotected by § 101(a)(2). The court rejected the analogy, concluding that Congress could not have intended to commit to union disciplinary tribunals the "judicial" task of "drawing the fine line between criticism and defamation." 316 F.2d at 450.

Moreover, even if the First Amendment analogy were controlling, it would not dictate the result reached below on the question of statutory construction presented in this case. As we noted in the Petition, at 23-24 n. 37, USWA's rule has the same purpose as 2 U.S.C. § 441e, which prohibits candidates for federal office from soliciting or accepting contributions from foreign nationals. Invalidation of USWA's rule by analogy to the First Amendment, we suggested, would mean that 2 U.S.C. § 441e is unconstitutional. *Ibid.* Respondents counter that the situations are not the same, because non-resident aliens do not enjoy the protection of the Constitution (Opp. 15, n. 16). But, of course, neither do non-members of unions enjoy protection under the LMRDA. In each case the contributor has no protected rights, and in each the rights assertedly entitled to protection are those of the recipient (as respondents later acknowledge, Opp. 17). That 2 U.S.C. § 441e would be held constitutional is fairly inferrable from this Court's decision in *Kleindienst v. Mandel*, 408 U.S. 753, and the principles there stated seem equally applicable when it is a union seeking to protect *its* interests against "foreign encroachments," *id.* at 765.

4. Respondents' Alternative Bases For Upholding The Decision Below

Respondents assert that even if the court below erred in construing § 101(a)(2) to invalidate USWA's ban on outsider contributions, the same result would be warranted on two other grounds that the court below did not reach. (Opp. 18-22).[4] Since both of those grounds

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[4] We think a fair reading of the opinion below is that the court *did* reach (and rejected) respondents' argument that the violation of § 101(a)(4) alone warranted invalidation of the rule in its entirety. The court stated that "[a]lthough we believe that

are patently insubstantial, they do not constitute a basis for leaving unreviewed the ruling the court of appeals *did* make, which is of general application, major importance, and questionable validity.

(a) § *101(a)(4) and "Non-Separability"*

The court below ruled that USWA's rule violates § 101(a)(4) of the LMRDA by denying members the right to use non-member contributions to finance election-related lawsuits. (App. 5a-10a, 35a-36a). Respondents, noting that we did not include a question in the petition addressed to that holding, erroneously conclude that "USWA apparently concedes that the outsider contribution rule violates the LMRDA right-to-sue provision embodied in § 101(a)(4)," (Opp. 18). We do not so concede. We did not seek review by this Court of that holding because (1) it is not intrinsically worthy of this Court's attention, the outcome depending solely upon the proper construction of USWA's rule, and (2) USWA would not be inconvenienced by an injunction forbidding application of USWA's rule to *litigation* financing, for USWA did not intend the rule to apply to such financing in the first place. USWA thus has no independent interest in obtaining a reversal of the § 101(a)(4) holding, albeit it would acquire such an interest were respondents to invoke that holding, coupled with a claim of "non-separability," as a basis to invalidate USWA's rule in its entirety (*i.e.* as applied to *campaign* financing). USWA continues to believe that the § 101(a)(4) holding below is incorrect; but even if correct, it would

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the entire rule must fall, it is *not* because of our adherence to some formalistic non-separability rule" (App. 11a, emphasis added). Moreover, it seems unlikely that the court would have rested its decision on a ground not even raised in the district court (*id.* 11a-12a) if it believed the case could be affirmed on the non-separability ground adopted by the district court.

not provide a basis for striking down USWA's rule in its entirety.[5]

(b) *The Claim That USWA's Rule Violates The First Amendment*

The other alternative basis urged by respondents in their Opposition (19-22)—that there is governmental action here requiring invalidation of USWA's rule under the First Amendment—is frivolous. Even if the First Amendment *were* applicable, it is doubtful that USWA's rule offends it.[6] But the dispositive threshold point is that the First Amendment is *not* applicable, for USWA's rule is not governmental action. Each of the three grounds urged by respondents for finding governmental action is hopelessly flawed.

First, respondents argue that because Congress has invested unions with certain powers (exclusive recog-

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[5] As the Court explained in *Parker v. Levy*, 417 U.S. 733, 760: This Court has . . . repeatedly expressed its reluctance to strike down a statute on its face where there were a substantial number of situations to which it might be validly applied. Thus, even if there are marginal applications in which a statute would infringe on First Amendment values, facial invalidation is inappropriate if the "remainder of the statute . . . covers a whole range of easily identifiable and constitutionally proscribable conduct . . . ."

See also, *Broadrick v. Oklahoma*, 413 U.S. 601, 613. Given Congress' objective that the LMRDA work the minimum necessary intrusion upon union self government (Pet. 15-17, 21-23), the same principles are applicable when provisions of union constitutions are found to be overbroad, and that is indeed the approach that has been taken by other lower courts. *Alvey v. General Elec. Co.*, 622 F.2d 1279, 1286-87 (7th Cir. 1980); *Retail Clerks Union v. Retail Clerks International Ass'n.*, 299 F.Supp. 1012, 1025-26 (D.D.C. 1969) (Gesell, J.).

[6] See p. 6, *supra*.

nition, and the right to negotiate union security agreements), all actions taken by unions are "governmental in nature," Opp. 20. That contention is inconsistent with the unanimous view of this Court and the lower courts that union action is not governmental action. *Steelworkers v. Weber*, 443 U.S. 193, 200. See also, e.g., *Florey v. Air Line Pilots Ass'n., Intern'l.*, 439 F.Supp. 165, 172 (D. Minn. 1977), *aff'd*, 575 F.2d 673, 676 (8th Cir. 1978); *Driscoll v. International Union of Operating Engineers, Local 139*, 484 F.2d 682, 691 (7th Cir. 1973), *cert. denied* 415 U.S. 960 (1974). These decisions are but manifestations of the more general principle that congressional or state conferral of extensive powers upon private entities—even "monopoly" powers—does not make the actions of such entities governmental action. See, *e.g., Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 350-352; *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163, 176-177.

Second, respondents argue that because § 401(e) of the LMRDA, 29 U.S.C. § 481(e), requires unions to conduct elections in accordance with their constitutions, Congress has given "coercive effect to rules of private bodies," Opp. 21. That might provide a basis for attacking the constitutionality of § 401(e), but it is not a basis for attacking as unconstitutional USWA's rule itself. This precise distinction was drawn by this Court in *Moose Lodge*, 407 U.S. at 171-172, 179, and in *Shelley v. Kramer*, 334 U.S. 1, 13-14, 20.

Finally, respondents contend that because § 402 of the LMRDA, 29 U.S.C. § 482, requires union members to invoke internal union remedies before filing election complaints with the Secretary of Labor, there is here a "symbiotic" relationship sufficient to make all union election rules governmental action under the decision in

Burton v. Wilmington Parking Authority, 365 U.S. 715, Opp. 21-22. But in contrast to the joint commercial endeavor in *Burton*, the relationship between the Secretary and unions is that of regulator-regulatee. That the LMRDA leaves unions largely free to regulate their own affairs, and affords unions the opportunity to correct their own transgressions before there can be governmental intervention, reflects the congressional judgment underpinning all of the LMRDA: that unions are private organizations into whose affairs government should intrude sparingly. This solicitude for union autonomy is the antithesis of a "symbiotic" government-union relationship, not proof of one.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

The State of the Record With Respect To The "Facts" Stated In Respondents' Opposition

Respondents attempt to convey a picture of respondent Sadlowski as the first serious challenger to the leadership of USWA (Opp. 3-5). But the undisputed evidence in the record is that in USWA's 1965 election the incumbent president of USWA was *defeated* (Williams Aff., ¶ 18); that the challenger in the 1969 presidential election received only one percentage point less than did Sadlowski in 1977 (*ibid.*); and that the challenger in the 1956 presidential election received only two percentage points less than did Sadlowski in 1977 (Kleiman Decl. ¶ 7). Additionally, the undisputed record evidence is that numerous incumbents of other Executive Board offices in USWA have been defeated by challengers (*ibid.*; Leseganich Decl.; Valenta Decl.; Coyne Decl.; Odorcich Decl.).

Respondents' depiction of USWA's staff employees as automatically furnishing monolithic support to the incumbent officers of USWA (Opp. 4, 6-7) is refuted by the record evidence recited in Pet. 4 n.2 and 11-12 n.18, and by undisputed declarations describing elections in which all or most of the staff employees *opposed* incumbent officers under whom they worked (Leseganich Decl. ¶¶ 9, 10; Coyne Decl. ¶ 4; Valenta Decl. ¶ 6).

Respondents' depiction of the process by which locals submitted Convention resolutions urging a ban on non-member contributions (Opp. 8 and n.8) distorts the record. The traditional method within USWA by which proponents determine whether proposed constitutional amendments have membership support is to distribute them to locals; the members of the locals then vote on whether they wish to support the proposed amendment by submitting a Convention resolution urging adoption. That is the process that led to local union resolutions

urging adoption of the ban on non-member contributions. (Williams Decl. ¶ 3-10). USWA's International Secretary, Lynn Williams, was a proponent of such an amendment, because he feared that otherwise the membership's antipathy to outsider involvement would lead to a constitutional change substituting convention elections for referendum elections—a change that, albeit permitted by the LMRDA, Williams believed to be less democratic than retention of referendum elections (id., ¶ 4-6).

Sadlowski's non-member support did not come principally from family members, as intimated at Opp. 7. See Williams Aff., Ex. C, D, E. The reason that USWA did not make an exception for relatives and friends from the ban on non-member contributions was explained in Williams Aff. ¶ 11(2), and was not disputed:

> A second question which we considered was whether to make an exception from the ban on outsider contributions for relatives and/or friends. On the one hand, the concerns which had prompted the outpouring of union member sentiment for adoption of the ban related to those outsiders who wished to influence the future course of the union's policies and practices for their own interest, and relatives and close personal friends who contributed to candidates for personal reasons were unlikely to pose a threat to USWA's interests. On the other hand, as we thought the problem through more carefully, we recognized that such an exception would create a potential "loophole" which could be used to undermine the purposes of the rule entirely. For it would be impossible to ascertain the sources of the monies which relatives or friends might donate to candidates, and thus relatives and friends could be the recipients of contributions from total outsiders, transmit those contributions to candidates, and thus undermine the purposes of the rule. It would be administratively impossible

for the union to regulate or monitor this, for USWA has no power to command compliance with its rules on the part of relatives and friends who are not USWA members. Moreover, an exception for "friends" would be open-ended: anybody willing to contribute to a candidate—whether or not a friend before—undoubtedly would be thought to be a "friend" when he offered to contribute. On balance, we concluded that the only way to make a ban on outsider contributions viable was to make the ban absolute, and to allow no exceptions.

Contrary to the intimations at Opp. 8-9 that only the officers of USWA championed adoption of the ban, the transcript of the Convention debate shows numerous rank-and-file delegates speaking in support of the ban. Williams Aff.; Ex. G, pp. 245-251. And, as noted in this brief, *supra* p. 4, it is undisputed that the rank-and-file delegates voted overwhelmingly to adopt the ban.

Petitioner's Brief

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No. 81-395

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
Petitioner,

v.

EDWARD SADLOWSKI, JR., JOSEPH SAMARGIA, EDWARD SADLOWSKI, SR., LEONARD S. RUBENSTEIN, and JAMES MILLER,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR PETITIONER

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QUESTIONS PRESENTED FOR REVIEW

1. Does § 101(a)(2) of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 411(a)(2), which provides that "every member of any labor organization shall have the right to meet and assemble freely with other members [and] to express any views, arguments, or opinions," preclude the membership of a union, acting through democratic process, from adopting a rule prohibiting candidates for union office from accepting campaign contributions from non-members?

2. If so, does § 101(a)(2), to that extent, deprive union members of freedom of association protected by the First Amendment?

LIST OF PARTIES

In addition to the parties listed in the caption, the Secretary of Labor was a defendant in the district court and an appellee in the court of appeals.

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BRIEF FOR PETITIONER

This brief is the joint product of petitioner United Steelworkers of America, AFL-CIO-CLC ("USWA") and the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"), the federation of national and international unions with which USWA is affiliated. The AFL-CIO shares with USWA the view that non-member participation in internal union elections is inimical to the interests of trade unions, and the view that Congress has not disabled the members of a union, acting through democratic processes, from deciding to prohibit non-members from contributing to candidates for union office. The decision of USWA and AFL-CIO to file a single brief reflects the identity of their views on the legal issues presented, and their desire to minimize the burden on the Court by stating their common position only once.

OPINIONS BELOW

The opinion of the district court is reported at 507 F.Supp. 623, and is reprinted as Appendix B to the Petition for a Writ of Certiorari, pp. 31a-38a. The opinion of the court of appeals is reported at 645 F.2d 1114 and is reprinted as Appendix A to the Petition, pp. 1a-30a.

JURISDICTION

The court below issued its opinion and judgment in this case on March 31, 1981. On June 19, 1981, Chief Justice Burger entered an order extending the time for filing a petition for certiorari to and including August 28, 1981 (App. C, p. 41a), and the petition was filed on that date. This Court has jurisdiction to review the judgment below under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides in pertinent part as follows:

> Congress shall make no law . . . abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The pertinent parts of Titles I and IV of the Labor Management Reporting and Disclosure Act of 1959 ["LMRDA"], 29 U.S.C. §§ 411-412, 481-483, are reprinted in an Appendix to this brief.

STATEMENT OF THE CASE

Introduction

The court below struck down a rule, duly adopted by democratic decision of the members of United Steelworkers of America ("USWA"), that prohibits candidates for International Office in USWA from accepting campaign contributions from non-members. Through this rule, the members of USWA sought to insure that high

union office-holders will not be beholden to outside interests but will, instead, be beholden only to the interests of the union members they are elected to serve.

The court below held that the rule violates the "free speech" provision of the LMRDA, § 101(a)(2), 29 U.S.C. § 411(a)(2). And the court rejected the union's argument that as thus construed § 101(a)(2) deprives USWA's members of their right under the First Amendment to exclude non-member participation in the union's internal affairs. These are the holdings that this Court has granted certiorari to review.

Statement of Facts

The case was decided below on cross-motions for summary judgment. The district court granted summary judgment in favor of plaintiffs (respondents here) invalidating USWA's rule, and the court of appeals affirmed. USWA submitted a number of affidavits, declarations, and documentary exhibits, explaining the history of USWA elections and of the adoption of the USWA rule in question. The Statement of Facts which follows is based upon that evidence. Most of the facts stated herein were not disputed by plaintiffs. And given the posture of the case, all evidence placed by USWA before the district court, whether or not disputed by plaintiffs, must for the purpose of determining whether summary judgment was properly granted to the plaintiffs be assumed to be true.

USWA is a labor organization with 1,300,000 members. USWA elects its officers every four years by referendum vote of its members.[1] USWA has a long

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[1] All USWA members are eligible to vote for the five top officers; all USWA members in Canada are eligible to vote for the National Director of Canada; and all members within a district are eligible to vote for the District Director of that district (USWA is divided for administrative purposes into 25 geographic districts; 22 in the United States and 3 in Canada). The five top officers, the National Director of Canada, and the 25 District Direc-

history of contested elections, in which incumbents and other administration-supported candidates frequently have been defeated.[2]

In USWA's 1977 election, two candidates ran for President: Edward Sadlowski, Jr., the District Director of District 31 (USWA's largest district), and Lloyd McBride, the District Director of District 34. Each headed a slate of candidates seeking the five top officer positions (JA 27).

The 1977 election was marked by a phenomenon new to USWA and indeed apparently unprecedented in the history of the AFL-CIO: the Sadlowski campaign was financed primarily by contributions from persons who were not USWA members (JA 27, 398).[3] In contrast, in prior USWA elections, candidates—including many who had successfully campaigned against and defeated in-

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tors together comprise the International Executive Board. (JA 26-27). The rule whose validity is at issue in this case is applicable to elections to fill all of these offices. (JA 30-32).

[2] In USWA's 1965 election, the incumbent President and Vice-President of USWA were defeated in their bids for re-election. In the next election, in 1969, the incumbent President was re-elected, but in six of the eleven contested races for District Director the incumbent or candidate supported by the President was defeated. Following the next election, in 1973, USWA's International Executive Board (which then had 28 members) included 17 who had gotten into office by defeating an incumbent or who had opposed the election of the then-incumbent top officers of USWA. In the 1977 election, three incumbent District Directors were defeated in re-election bids, and in at least two other District Director races the winning candidates were elected on platforms openly critical of USWA's top officers. (JA 38, 224-25, 416-24).

[3] Indeed, so unprecedented was this phenomenon that George Meany, then the President of the AFL-CIO, who "had never uttered an opinion about any election in any constituent union of the AFL-CIO" concluded that "events in the Steelworkers election 'make it impossible for me to remain silent at this time.'" (JA 49). *See also* n. 5, *infra*.

cumbents—had relied solely, or virtually so, upon contributions from USWA's members.[4]

The desirability of candidates accepting non-member contributions became a major issue in the USWA election campaign, indeed, in Sadlowski's view, "the principal campaign issue" (JA 129). The McBride slate contended that outsider participation in USWA elections was dangerous for the union (JA 27 n.2, 298), and Sadlowski's campaign coordinator viewed this as the McBride slate's "most effective" campaign issue (JA 398).

The issue was also the subject of public debate. The argument for such expenditures was made by Joseph L. Rauh, Jr., Sadlowski's attorney. In an article on the "op-ed" page of the *New York Times* three weeks before the election, Rauh argued: as "the decisions reached by the elected officials [of national unions] vitally affect the public interest" the public has "a sufficient interest in the outcome of union elections to warrant their participation as personal and noninstitutional contributors" (JA 40, 42). Vigorous disagreement with Rauh's views was expressed by such divergent voices as the editors of the *New York Times* and the *Wall Street Journal*, and George Meany and Albert Shanker (JA 43-55). Their common theme was reflected in this passage by Albert Shanker:

> At one time it was thought that the boss was the only outsider who had an interest in trying to control the affairs of the union. Obviously that is wrong. Some outsiders want to control the election because they want the union to take their positions on foreign policy and defense. Small extremist groups have often had the same goal. Political figures want to influence the union presidency so that in the future the union will help them get their

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[4] For example, the record contains declarations describing seven candidates who unseated incumbents, and an eighth who defeated an administration-supported candidate, with no, or virtually no, financial support from non-members (JA 201-02, 206, 208-10, 213, 214, 215-16).

> choice for the U.S. presidency. One thing is certain: not one of these outside groups really cares about the wages, hours, working conditions or job security—the basic economic interests—of the steelworkers. The outsiders have their own agendas. [JA 54] [5]

McBride defeated Sadlowski by a wide margin (57% to 43%) and the other members of the McBride slate won by comparable margins (JA 421-22).[6] The McBride slate understood its election to constitute a mandate to address USWA's institutional vulnerability to the threat of outsider influence, and upon taking office it solicited views of members at all levels of the union as to how best to deal with that threat. Many members urged that USWA shift from referendum elections to convention elections—an option permitted by the LMRDA, § 401(a), 29 U.S.C. § 481(a)—which, because it eliminates campaigning to the membership, lessens the incentive for candidates to raise substantial sums of money. Others within the union, believing that referendum elections are more democratic and likelier to continue USWA's tradition of hotly-contested elections, preferred the direct solution of prohibiting candidates' acceptance of non-member contributions (JA 210-11, 298-99).

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[5] The *New York Times* observed that non-member contributions "open the way to contributors seeking to buy something other then the well-being of a union," and warned that "money is not usually freely given and union politicians are no more immune than others to its lure and to its claims" (JA 44). The *Wall Street Journal* counseled that "it's clear that the people who financed the Sadlowski insurgency obviously had something on their minds beyond getting the best deal for the steelworkers" (JA 48). George Meany found "deeply disturbing" the involvement of "people completely outside the labor movement—businessmen, academics and professional people" in USWA's election, and warned that this represented "an effort to control [unions'] policies and program by monied interests outside the union" (JA 49-50).

[6] McBride received 328,861 votes to 249,281 for Sadlowski (JA 421).

The focal point of this dialogue was the then upcoming (1978) USWA Convention. The Convention, consisting of delegates elected by the members of USWA's approximately 5,000 local unions, is USWA's highest governing body, and each Convention adopts a Constitution to govern the affairs of USWA for the next two years (JA 25-26).

To determine whether a direct ban on non-member contributions had membership support, its proponents followed a procedure often used within USWA to gauge membership sentiment: they tendered resolutions proposing such an amendment for consideration by local unions in three districts of USWA (one in Canada, one in West Virginia, and one in Texas). The members in 225 of these local unions decided, by majority vote, to submit resolutions to USWA's 1978 Convention recommending amendment of the USWA constitution to prohibit non-member contributions (JA 29-30, 299-300).[7]

One week prior to the 1978 Convention, the International Executive Board met and discussed the same subject. After substantial debate, in which a number of Board members expressed opposition, the Board, by majority vote, opted to recommend to the Convention a ban on accepting non-member contributions (JA 30, 34-35, 143).

Based on both the local union resolutions and the recommendation of the Executive Board, the Constitution Committee of the Convention, composed of 76 Convention delegates, considered whether to recommend such a constitutional amendment; the recommendation of this Committee is a prerequisite to a proposed amendment being brought before the entire Convention. The provisions of the proposed amendment were discussed at length and the Committee voted overwhelmingly to recommend to the Convention the adoption of the proposal (JA 35).

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[7] On only two other issues were there local union resolutions even approximating in number those submitted respecting the "outsider" issue (JA 30).

This recommendation of the Constitution Committee generated vigorous debate on the floor of the Convention, in which numerous rank-and-file delegates urged adoption to prevent the risk of officers becoming beholden to outside financial backers. At the close of the debate, the 4,227 delegates, by a margin of approximately 10 to 1, voted to adopt the proposed amendment (JA 35-36, 81-105). The "outsider" rule became Article V, § 27 of the USWA Constitution, and provided in pertinent part, as follows:

> Sec. 27. No candidate (including a prospective candidate) for any position set forth in Article IV, Section 1, and supporter of a candidate may solicit or accept financial support, or any other direct or indirect support of any kind (except an individual's own volunteered personal time) from any non-member. . . .[8]

Proceedings Below

This lawsuit was filed a year after the adoption of Art. V § 27. The plaintiffs were two members of USWA (Sadlowski and Joseph Samargia) who contemplated becoming candidates in USWA's 1981 election and who wished to solicit and accept contributions from non-members of USWA, and three non-members of USWA

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[8] Art. V § 27 went on to vest "final and binding" enforcement authority over the ban on outsider contributions in a "Campaign Contribution Administrative Committee ("CCAC") to consist of three persons "who shall be distinguished, impartial citizens who are not members of the International Union" (JA 68, 70). Former Secretary of Labor Willard Wirtz was appointed chairman of the committee; the other two members named to the committee were David Lewis, for many years federal leader of the New Democratic Party in Canada and at the time of his appointment a Research Professor at Carleton University, and Eric Springer, formerly Director of Compliance of the United States Equal Employment Opportunity Commission and Chairman of the Commission on Human Relations in Pittsburgh, Pennsylvania (JA 37-38).

Under Art. V § 27, the USWA Executive Board was authorized to confer powers on the CCAC with respect to other aspects of USWA elections beyond those covered by the outsider rule. Pur-

who had contributed to Sadlowski's campaign in the 1977 election and wished to contribute to candidates in future USWA elections.[9] The complaint did not allege—and plaintiffs did not contend at any time during the district court proceedings—that Art. V § 27 violated Section 101(a)(2) of the LMRDA (the basis upon which the

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suant thereto, the Executive Board empowered the CCAC to administer the Union's election rules regulating the use of union funds and facilities; the expenditure or use of employer monies; the inspection, copying and dissemination of membership lists; and the mailing of campaign literature. The 1980 USWA Convention conferred yet additional powers on the CCAC, including exclusive jurisdiction over all post-election challenges to elections alleging misuse of union funds, employer funds, or outsider funds (JA 69, 490-91).

[9] JA 5-6, 14. The three were Leonard S. Rubenstein, a Washington, D.C. attorney; James Miller, a Boston attorney; and Edward Sadlowski, Sr., the father of candidate Sadlowski. Under USWA's rule, even relatives of candidates cannot contribute if they are non-members. The reason USWA had not made an exception for relatives and friends was explained in an affidavit (JA 32) and not disputed:

> [W]e considered . . . whether to make an exception from the ban on outsider contributions for relatives and/or friends. On the one hand, the concerns which had prompted the outpouring of union member sentiment for adoption of the ban related to those outsiders who wished to influence the future course of the union's policies and practices for their own interest, and relatives and close personal friends who contributed to candidates for personal reasons were unlikely to pose a threat to USWA's interests. On the other hand, as we thought the problem through more carefully, we recognized that such an exception would create a potential "loophole" which could be used to undermine the purposes of the rule entirely. . . . [R]elatives and friends could be the recipients of contributions from total outsiders, transmit those contributions to candidates, and thus undermine the purposes of the rule. It would be administratively impossible for the union to regulate or monitor this, for USWA has no power to command compliance with its rules on the part of relatives and friends who are not USWA members. . . . On balance, we concluded that the only way to make a ban on outsider contributions viable was to make the ban absolute, and to allow no exceptions.

court below invalidated the Steelworkers' provision). Rather, plaintiffs contended in the district court that Art. V § 27 violated the National Labor Relations Act, the First Amendment, Title IV of the LMRDA (the title governing union elections), and § 101(a)(4) of the LMRDA (the "right to sue" provision).[10]

USWA moved to dismiss the complaint for failure to state a claim, and both sides moved for summary judgment. In addition to the facts recited at pp. 3-8, *supra*, USWA, while telling the court that it believed the complaint should be dismissed as a matter of law, put before the district court, in connection with its alternative motion for summary judgment, the following evidence (none of which was disputed) respecting the availability of campaign financing from USWA members:

> (1) USWA has 1,300,000 members, each of whom is eligible under Art. V § 27 to provide financial support to candidates for union office (JA 25).
>
> (2) At the time evidence was submitted, prior to the most recent round of wage increases, the average earnings of USWA members in the five major industries USWA represents were well over $20,000 per year (JA 118-19).
>
> (3) Many candidates in past USWA elections have defeated incumbents, financing their campaigns exclusively, or almost exclusively, from contributions of USWA members (n.4, *supra*).
>
> (4) Early experience under Art. V § 27 reconfirmed that such campaigns could be financed without outside support. At the time the evidence was submitted, a non-incumbent candidate for district director in a small district containing 3% of

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[10] In addition to suing USWA, plaintiffs also named the Secretary of Labor as a defendant, alleging that the Secretary had "sanctioned and approved" Art. V § 27 (JA 14). The Secretary's motion to dismiss was granted on undisputed proof that the Secretary had not done so (App. 38a). The court of appeals affirmed this ruling (App. 26a).

USWA's membership already—fifteen months before the 1981 USWA election—had raised in excess of $30,000 from rank-and-file USWA members in the district, and he anticipated raising $80,000 by the time of the election (JA 121-23, 217-18, 27 n.1). Extrapolating even the $30,000 figure over the entirety of USWA's districts would produce a volume of contributions greatly exceeding the amounts raised by either slate for the top offices in the 1977 election (JA 175).

USWA also introduced the following evidence—again undisputed—to rebut plaintiffs' unsupported allegations that incumbents could count on financial support from the members of the USWA staff and that this supposed support gave incumbents an unfair advantage:

(1) The staff employees of USWA are members of the USWA with the same right to participate—or not to participate—in USWA elections as any other USWA member.[11] The collective bargaining agreement between USWA (as employer) and the union that represents staff employees guarantees staff employees protection against job interference of any kind for the positions they take in USWA elections. In advance of each election, a letter is sent by USWA to each staff employee reiterating his entitlement to support whomever he chooses in USWA elections (JA 107-08, 110-115, 301).[12]

(2) While in some elections the staff has solidly supported an incumbent officer, in others the staff has solidly supported the candidate opposing an incumbent, and in still others the staff has been divided. Staff members frequently run for office

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[11] Staff employees may not, however, engage in political activities on union time. 29 U.S.C. § 481(g).

[12] Any violation of the provision of the agreement guaranteeing such freedom would be remediable through the grievance-arbitration machinery established under the agreement. On several occasions the staff union—which, for many years, was headed by one of the candidates who ran on Sadlowski's slate in 1977—took grievances to arbitration alleging political retaliation. On each occasion, USWA was found not guilty of the charge (JA 107, 310-11).

against incumbent officers or administration-backed candidates; for example, in the 1977 election, three of the candidates for top office on the Sadlowski slate were staff employees, three other staff employees ran against and defeated incumbent District Directors, and more than 20 staff employees ran unsuccessfully for District Director positions (JA 108, 202, 203-04, 208, 209, 213-16).

(3) With respect to the 1977 election, in which the McBride slate had the support of the incumbent USWA administration, plaintiffs' own evidence showed the McBride slate receiving financial support from only one-third of USWA's staff employees (JA 173).

(4) In any event, there are only 1,500 staff employees in the USWA as contrasted with a total membership of 1,300,000 members. And the staff employees are in no better (or worse) position to contribute to candidates for union office than is the membership generally, since the salaries of USWA staff employees are not significantly higher than those of the members (JA 109, 118-20).

The district court, in resolving the motions to dismiss and for summary judgment, rejected all of plaintiffs' claims except one. Notwithstanding that the neutral body appointed by USWA to administer Art. V § 27 (*see* n. 8, *supra*) had ruled that the provision "does not extend to financial support for legal services," the court feared that Art. V § 27 might deter candidates from accepting non-member contributions to finance campaign-related litigation.[13] The court on that basis held that Art. V

[13] When the complaint was filed in this action alleging that Art. V § 27 would prohibit a candidate from raising money from non-members to finance litigation related to his candidacy, USWA's counsel requested an advisory opinion from the CCAC as to whether the provision applied to the financing of litigation. After soliciting the views of counsel for plaintiffs and USWA, the CCAC issued the ruling quoted in text. The CCAC left open the question whether Art. V § 27 would prohibit a candidate from accepting outsider contributions to finance a lawsuit which "is not a bona fide attempt to secure an adjudication of legal rights, but, rather,

§ 27 violated § 101(a)(4) of the LMRDA, which provides that "[n]o labor organization shall limit the right of any member thereof to institute an action in any court." Although the court found no legal infirmity in Art. V § 27's core prohibition on outsider contributions for *campaign* (i.e., non-litigation) purposes, it enjoined enforcement of Article V, § 27 *en toto*, reasoning that the portion of the rule "which limits meaningful access to the courts . . . cannot be separated or isolated from the rule in its entirety" (App. 34a).

On appeal, the court of appeals affirmed the district court's finding that Art. V § 27 violated § 101(a)(4) of the LMRDA because of its potential impact on litigation activities (App. 5a-10a). The appellate court declined, however, to predicate an injunction against enforcement of Art. V § 27 *in its entirety* on this limited violation.[14] Nonetheless, that court reached the same result, holding that Art. V § 27's ban on accepting outsider *campaign* contributions violated § 101(a)(2) of the LMRDA, the

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is motivated solely by a desire to promote a candidate's political campaign," albeit stating that it [the CCAC] "would be exceedingly reluctant about putting its own interpretation on the quality of good or bad faith that attends an individual's asserting his or her legal right in a court proceeding" (JA 223-24, 449-50, 453-59). *See* App. 8a.

[14] ". . . We now turn to what is perhaps the core issue in this case—the proper scope of the remedy for the violation of the right to sue.

* * *

The Union argues that if we find, as we have, that the outsider rule violates the right to sue, then "[a]t most, plaintiffs would be entitled to an injunction prohibiting application or enforcement of that provision to interfere with the solicitation or acceptance of contributions from nonmembers to finance litigation." Union's Brief at 40. . . . Much of the parties' arguments on the proper scope of the remedy have focused on whether or not we can "separate" the application of the outsider rule that violates the right to sue from the remaining applications of the rule. *Although we beleive that the entire rule must fall, it is not because of our adherence to some formalistic nonseparability rule.*" [App. 10a-11a, emphasis added].

"freedom of speech and assembly" provision of the Act—a claim asserted by plaintiffs for the first time on appeal.[15] On this issue the court of appeals granted summary judgment to plaintiffs on the basis of the following "conclu[sion]":

> [W]e conclude that the outsider rule in many instances could unquestionably operate to prevent candidates, at least those facing the electoral power of entrenched union staffs, from 'amassing the resources necessary for effective advocacy.' [Pet. App. 17a-18a]

This additional violation, the court concluded, justified affirmance of the district court's injunction against the enforcement of Art. V § 27 with respect to campaign contributions as well as litigation contributions.[16]

In a footnote, the court dismissed USWA's claim that if, as the court had held, § 101(a)(2) prohibited USWA's members from banning outsider contributions, § 101(a)(2) would to that extent violate the First Amendment right of USWA members to determine what role, if any, outsiders are to play in the union's internal affairs (App. 23a-24a, n.19).

The Issues Before This Court

For reasons explained in the margin, USWA's petition for certiorari did not seek review of the holding below that Art. V § 27 could deter outsider financing of *litigation* and in that respect violates § 101(a)(4) of the

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[15] The court of appeals held that it could consider this claim even though not advanced in the district court, reasoning that USWA was not prejudiced by the plaintiffs' failure to make the claim in the district court (App. 11a-13a).

[16] The appellate court modified the district court's injunction in one limited respect: whereas the district court had invalidated Art. V § 27 *en toto*, the court of appeals upheld the portion of that provision authorizing the USWA Executive Board to delegate to the CCAC the power to administer other USWA election rules unrelated to the ban on outsider contributions (App. 25a-26a; *see* n. 8, *supra*).

LMRDA, although USWA considers that holding incorrect.[17] Rather, USWA's petition challenged the holding below invalidating under § 101(a)(2) the prohibition on outsider financing of *campaign activities.*

INTRODUCTION AND SUMMARY OF ARGUMENT

1. The central point of Congress' regulation of union elections in the LMRDA and of USWA's regulation of non-member contributions to candidates for union office is the same. Congress concluded that there was a need "through the election process to keep the union leadership responsive to the membership." *Steelworkers v. Usery*, 429 U.S. 305, 309. USWA's "outsider" rule reflects the Union's parallel commitment to a "leadership responsive to its membership" and USWA's opposition "to outsiders gaining control of our Union by putting money into our elections and then having candidates who owe them favors. If those candidates get elected, they will run the Union for the benefit of the outsiders who bankrolled them and not for the benefit of the Union's membership" (JA 210; *see also* JA 61-62, 81-97, 275, 303, 304).

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[17] USWA did not seek review of the § 101(a)(4) holding because (1) it is not intrinsically worthy of this Court's attention, the outcome depending in part upon the proper construction of USWA's rules, and (2) USWA would not be inconvenienced by an injunction forbidding application of USWA's rule to *litigation* financing for USWA did not intend the rule to apply to such financing in the first place.

In their brief in opposition (pp. 18-19), respondents suggested that the result below could be sustained on the alternative ground that (as the district court held, App. 36a, but the court of appeals abjured, App. 10a-11a) Art. V § 27 must be invalidated *en toto* on the basis of the § 101(a)(4) holding alone. If respondents renew this contention in their merits brief, we will oppose it on dual grounds: (1) there was no § 101(a)(4) violation, and (2) even if there were, it would not justify invalidating Art. V § 27's application to financing of *campaign* activities (*see* Reply Brief in Support of Petition, pp. 7-8).

Nonetheless the court of appeals found USWA's rule—adopted overwhelmingly by USWA's membership through its democratic processes—repugnant to the LMRDA. That counter-intuitive result rests on the lower court's understanding that § 101(a)(2) of the Act "serves to limit labor unions much as the First Amendment limits Congress in the restrictions that can validly be placed on campaign finance . . . ." (Pet. App. 17a). But while USWA's rule would pass muster even if a First Amendment analysis were applicable, Congress simply did not intend to embody in § 101(a)(2) the First Amendment rules governing campaign financing. For the following reasons, the lower court's reading of § 101(a)(2) is too expansive.

(a) Title IV of the LMRDA, rather than Title I, "was the vehicle by which Congress expressed its policy" regarding the regulation of union elections. *Wirtz v. Hotel Employees*, 391 U.S. 492, 498. In enacting Title IV, "Congress weighed how best to legislate against revealed abuses in union elections without departing needlessly from its long-standing policy against unnecessary governmental intrusion into internal union affairs." *Wirtz v. Bottle Blowers Ass'n*, 389 U.S. 463, 470-471. Title IV's comprehensive interrelated set of prohibitions and rights, crafted through "extensive and vigorous debate" in two Congresses, states the legislative judgment as to "the extent to which government intervention in this most crucial aspect of internal union affairs was necessary." *Id.* at 471.

There are two integral components of that judgment that are particularly relevant here. The first is § 403, which safeguards the right of union members to set their own election rules so long as those rules do not conflict with the rules Congress wrote in Title IV: "No labor organization shall be required by law to conduct election of officers . . . in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title." The second is Con-

gress' specific treatment in Title IV of the subject of campaign financing. In § 401(g), Congress prohibited the use of union funds and employer funds "to promote the candidacy of any person" in a union election. And in § 401(e) Congress guaranteed each union *member* the right "to support the candidate or candidates of his choice." The prohibitions of § 401(g) and the guarantee of § 401(e) constitute the "minimum democratic safeguards" (S. Rep. 187, 86th Cong., 1st Sess., 7 (1959)) prescribed by Congress on the issue of campaign financing. Beyond those safeguards, by reason of § 403, unions were left free to determine, through democratic processes, their own rules on that subject in their constitutions and bylaws, just as they may determine all other aspects of the conduct of their elections as to which Title IV is silent.

(b) Title I was added to the LMRDA on the floor of the Senate after consensus had been reached on both the broad outlines and all pertinent details of Title IV. By its terms, § 101(a)(2) gives no hint of a congressional intent to go beyond Title IV by extending statutory protection to non-member campaign contributions. The section, which confers rights only on "members" of unions, sets forth with particularity the rights conferred on individual members and the countervailing rights retained by the membership as a whole: individual members have the right "to meet and assemble freely with other members," "to express any views, arguments, or opinions," and "to express at meetings of the labor organization . . . views upon candidates in an election . . . or upon any business properly before the meeting," [18] but these rights are subordinated in the statute to the right of the membership as a whole to adopt "reasonable

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[18] Contrast this language with § 401(e) granting *members* the right to provide campaign support: "every member in good standing shall . . . have the right to . . . support the candidate or candidates of his choice, without being subject to penalty, discipline or improper interference or reprisal of any kind."

rules as to the responsibility of every member toward the organization as an institution . . . ." Neither that language nor the legislative history of Title I suggests a congressional intent to empower the courts to create a second election code that broadens the area of governmental intrusion in setting union election rules and narrows the area reserved in Title IV for membership decision in setting such rules. Specifically, nothing in that language or in the history of Title I indicates any intention to create additional rights for individual members with respect to campaign financing. Indeed, that subject is not alluded to in either the language or history of that Title.[19]

Nor do the language and history of Title I support the court of appeals' equation of § 101(a)(2) and the First Amendment. That suggested identity is belied by the section's language and by its place in the LMRDA's overall scheme. Section 101(a)(2) speaks in carefully qualified specifics, not in the First Amendment's "majestic simplic[ities]" (*Davis v. Passman*, 442 U.S. 228, 241). As just discussed, the right to receive campaign contributions from non-members is not among those specifics; indeed, it was not until *Buckley v. Valeo*, 424 U.S.

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[19] Only two subsections of Title I, neither having anything to do with campaign financing, even mention elections, and both restate rules already set out in Title IV. Subsection 101(a)(1) provides, in pertinent part: "Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization. . . ." And subsection 101(a)(2) provides in pertinent part: "Every member of any labor organization shall have the right . . . to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings . . . ." Compare the following rights provided in subsection 401(e): ". . . a reasonable opportunity shall be given for the nomination of candidates and every member in good standing . . . shall have the right to vote for or otherwise support the candidate or candidates of his choice . . . ."

1, 21, decided 17 years after the LMRDA was enacted, that the first suggestion of a First Amendment right to receive campaign contributions appeared. And contrary to the First Amendment's place in the Constitutional scheme, § 101(a)(2) is part of a statute that *elsewhere* (in Title IV) focuses expressly on the subject of campaign financing and *there* sets forth Congress' judgment respecting that subject.

2. If, as the court below held, § 101(a)(2) does preclude the membership of a union, acting through democratic processes, from deciding to bar non-members from participating in internal union elections, the provision is to that extent unconstitutional. The First Amendment freedom of association protects the right of persons who have joined together in an association to "determine the appropriate standards for participation" in the association's decision-making processes. *Democratic Party v. Wisconsin*, 450 U.S. 107, 124 n. 27. As construed by the court below, § 101(a)(2) deprives USWA members of that right. No "compelling interest" has been shown to "justify the imposition of [congressional] will," *id.* at 124, on USWA members in this regard; indeed, in enacting the LMRDA Congress did not identify *any* interest to justify disabling members of a union from deciding for themselves whether to permit outsider contributions, and even if a *post hoc* justification could suffice, the record here shows that none could be established. Thus, if § 101(a)(2) requires unions to permit non-members to contribute to candidates for union office, it violates the First Amendment.

ARGUMENT

I. Congress Regulated Campaign Financing In Title IV of the LMRDA, Not In Title I, And Title IV Permits Unions And Their Members To Adopt A Rule Prohibiting Campaign Contributions By Non-Members

A. The Statutory Language

Title IV of the LMRDA, entitled "Elections", sets out a series of "minimum democratic safeguards" governing the conduct of elections of union officers. That Title also vests in the union members the authority to decide for themselves through democratic internal processes how to regulate such elections beyond the statutorily decreed minimum standards.

Title IV prescribes three minimum standards as to campaign financing that unions and their members are not free to alter: In § 401(g), Congress prohibited the use of *union* funds or of *employer* funds "to promote the candidacy of any person" in a union election; and in § 401(e) Congress guaranteed each union *member* the right "to support the candidate or candidates of his choice." In § 403, Congress, in turn, expressly provided that unions are free in adopting their constitutions and bylaws to set their own election rules so long as those rules do not conflict with the minimum standards established in Title IV: "No labor organization shall be required by law to conduct elections of officers . . . in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this title."

Congress in drafting Title IV thus focused on the subject of union regulation of campaign financing. The legislature concluded that union election rules are to prevail subject to the limitation that those rules may not contain a prohibition of contributions by members or a permission for contributions by the union itself or by employers. Title IV, then, by its terms empowers the

union membership to decide whether or not their constitution or bylaws should contain a ban on non-member contributions to candidates for union office.

The court of appeals opined however that the scope of membership sovereignty with respect to the rules governing the financing of internal union election campaigns is by reason of § 101(a)(2) narrower than that preserved by Title IV. Section 101(a)(2) states:

> Freedom of speech and assembly.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

This language does not grant any rights whatsoever to *non-members*. And, in terms, the section limits the right of association guaranteed members to the right "to meet and assemble freely *with other members*." Further the only portion of the provision that focuses on the election process—the guarantee to each member of the right "to express at [union] meetings . . . his views upon candidates in [a union] election"—was not (and could not be) the basis for the court of appeals' decision.[20]

Thus the question here concerning § 101(a)(2)'s meaning comes down to whether the right of members who

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[20] Indeed, the court below omitted *that* portion of § 101(a)(2) when it quoted the text of § 101(a)(2) in its opinion (App. 13a).

are running for union office "to express [their] views, arguments, or opinions" implies a right to finance such expression with non-members' contributions. In 1959 there were numerous laws on the books regulating campaign contributions in political elections including the long-standing federal prohibitions of contributions by corporations, unions, government contractors, and foreign nationals. See 2 U.S.C. §§ 441b, 441e. While serious reservations had been expressed concerning government limitations of campaign *expenditures* (*e.g. United States v. CIO*, 335 U.S. 106, 121), there was at the time the LMRDA was enacted no case so much as suggesting that the First Amendment's "free speech" guarantee gives any right to a candidate to receive contributions. Indeed, the first hint that any such right might exist under the First Amendment came seventeen years after enactment of the LMRDA in *Buckley v. Valeo*, 424 U.S. 1, 21, discussed at 39-42 *infra*. In that light, it is hardly likely that Congress conceived of § 101(a)(2)'s free speech protection as the measure by which to judge union campaign finance rules like the Steelworkers' outsider rule—especially as that hypothesis would mean that Congress intended § 101(a)(2) to alter the rules on campaign finance stated in Title IV. A review of the evolution of the LMRDA and of the congressional debates confirms that Congress had no such intent.

B. The Legislative History

(1) *Title IV*

The legislative history of the LMRDA begins in 1958 with the issuance of the "Interim Report" of the Senate's Select Committee on Improper Activities in the Labor-Management Field—the "McClellan Committee"—containing findings that in some unions there was a lack of "democratic procedures" and recommending "that legislation be enacted assuring democratic procedures in labor unions." S. Rep. 1417, 85th Cong., 2d Sess. 4, 452 (1958). The Committee explained:

> While the committee feels that the bulk of American unions operate fairly and democratically and agrees with the principle that the Federal Government should not interfere in their normal functioning, it is still of the opinion that certain basic standards of democratic procedure should be established by law. In this regard, therefore, it recommends that Federal legislation be enacted to guarantee them a right periodically to elect their officers [and] a right to cast their ballots in secret, . . . [*Id.* at 452]

The same week that the McClellan Committee issued its Interim Report, the Subcommittee on Labor of the Senate Committee of Labor and Public Welfare—a majority of whose members were also members of the McClellan Committee (which did not itself have legislative authority)—began hearings on labor legislation.

From the outset of its hearings, the Subcommittee on Labor, chaired by Senator Kennedy, was presented with conflicting views as to how far the Government should go in regulating the internal affairs of unions. Some, led by Senator Knowland, the Senate Minority Leader, advocated rather detailed and extensive regulation. The Knowland bill would have required unions, *inter alia*, to hold secret ballot elections of officers, secret ballot recall elections, secret ballot votes on initiatives and referendums, secret ballot votes before a strike could be called or continued, and secret ballot votes for ratification of certain collective bargaining agreements; most of those elections were to be conducted by the NLRB on petition of 15% of the members of a union.[21]

Others urged much less extensive regulation of internal union affairs. For example, Senator Smith, the ranking minority member on the Labor and Public Welfare Committee, introduced legislation for the Eisenhower admin-

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[21] S. 3068, 85th Cong., 2d Sess. (1958), reprinted in Senate Committee on Labor and Public Welfare, Subcommittee on Labor, Hearings on Union Financial and Administrative Practices and Procedures, 85th Cong., 2d Sess. 138-44 (1958) (hereafter cited as "1958 Hearings").

istration that would have provided only minimal regulatory standards.[22] Testifying in support of this bill, Secretary of Labor Mitchell explained:

> We . . . approached the problem, Mr. Chairman, with the idea in mind of minimum interference in the affairs of a private organization such as the unions, by the Government. [1958 Hearings at 36]

Senator Kennedy convened a group of scholars who were expert in the field of labor relations and who gave the Senate Committee similar advice. Professor Archibald Cox, for example, urged the Committee not "to undermine self-government within the labor movement" and argued that "interference with the internal affairs of unions should be held to a necessary minimum." 1958 Hearings at 363. And he criticized the Knowland bill because

> it turns over to an arm of the State the responsibility for carrying on the governmental, internal governmental, processes of a labor union . . . .
>
> Such a measure, in my judgment, does not promote freedom or democracy. It reduces self-government. It denies the private responsibility and self-determination which lie at the heart of a voluntary association. . . . [*Id.* at 377]

The Committee ultimately reported out S. 3974, the "Kennedy-Ives" bill.[23] At the outset of its report accompanying that bill, the Committee announced its determination not "to undermine self-government within the labor movement," and the Committee explained the "principles" it had "followed" in "developing this bill":

> 1. The committee recognized the desirability of minimum interference by Government in the internal

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[22] S. 3097, 85th Cong., 2d Sess. (1958), reprinted in 1958 Hearings at 7-8.

[23] S. 3974, 85th Cong., 2d Sess. Senator Ives, the co-sponsor of the bill, was the ranking minority member of the Subcommittee on Labor.

The Kennedy-Ives bill was patterned after S.3751 which Senator Kennedy had introduced earlier in the session, 1958 Hearings 168-69.

affairs of any private organization. Trade unions have made a commendable effort to correct internal abuses, hence the committee believes that only essential standards should be imposed by legislation. Moreover, in establishing and enforcing statutory standards great care should be taken not to undermine self-government or weaken unions in their role as collective bargaining agents.

2. Given the maintenance of minimum democratic safeguards and detailed essential information about the union, the individual members are fully competent to regulate union affairs. The committee strongly opposes any attempt to prescribe detailed procedures and standards for the conduct of union business. Such paternalistic regulation would weaken rather than strengthen the labor movement; it would cross over into the area of trade union licensing and destroy union independence.

* * *

The bill reported by the committee, while it carries out all the major recommendations of the [McClellan] committee, does so within a general philosophy of legislative restraint. The bill does not spell out in detail all the standards which every trade union should follow. . . .

The test of a sound bill in this complex and relatively new legislative area is whether it is workable and will produce the desired results without destroying valued free institutions. The committee believes that the bill now reported possesses these attributes. [S. Rep. No. 1684, 85th Cong., 2d. Sess 4-5 (1958)]

Within the framework of these principles, the "Elections" title of the Kennedy-Ives bill was in broad outline basically the same as what eventually emerged as Title IV of LMRDA. With respect to the provisions pertinent here, the Kennedy-Ives bill contained a ban on contributions made by unions and employers in virtually the same words as the ban ultimately enacted in § 401(g). The bill did not address the question of the right of union

members to support candidates of their choice. And in § 303 the bill contained a less explicit forerunner of what was enacted as § 403: "The duties imposed and the rights and remedies provided by this title shall be exclusive."

On the floor of the Senate, Senator Knowland and those who shared his views attempted several times to amend the Kennedy-Ives bill to provide the more detailed and extensive regulation they deemed desirable. Senator Ervin, who led the opposition to most of these amendments, stated the gist of the opposing position:

> Democracy in unions means that the unions will operate their own affairs, so far as possible. It does not mean for the Senate to be adopting bylaws for the unions. [104 Cong. Rec. 11208]

And Senator Morse, speaking against one of these amendments, added:

> [T]he amendment attempts to have Congress intervene in the democratic processes of the unions. Either we believe or we do not believe in giving the unions the right to govern themselves under the broad safeguarding provisions the committee has reported to the Senate. . . .
>
> The pending amendment is an example of intervention into union affairs which I do not think the Congress should vote to establish. [*Id.* at 11462]

Each of these amendments was defeated overwhelmingly, *id.* at 11205, 11211, 11212, 11462, 11466.

On June 14, 1958, the Kennedy-Ives bill was approved by the Senate, by a vote of 88-1, *id.* at 11486-87, "without substantial change." [24] But the Senate bill was not acted on by the House Education and Labor Committee and died in the House when that body voted down an extraor-

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[24] Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 822 (1969). The text of the Kennedy-Ives bill as it passed the Senate is reprinted at 104 Cong. Rec. 18260-18266.

dinary motion to suspend its rules and approve the Kennedy-Ives bill as it had passed the Senate.

At the start of the eighty-sixth Congress, Senator Kennedy's Subcommittee on Labor held a second set of hearings, shorter than the 1958 hearings, and again reported a bill, the Kennedy-Ervin bill, to the Senate.[25] While the election title of that bill differed in some details from the Kennedy-Ives bill, the changes "did not alter the theory . . . of the measure";[26] indeed, the Committee's report restated, verbatim from the 1958 report (quoted at pp. 24-25, *supra*), the principles that the Committee had followed in shaping the bill.[27]

With respect to the provisions most pertinent here, the Kennedy-Ervin bill as reported contained a prohibition on union and employer campaign contributions in virtually the same form as enacted in § 401(g) of LMRDA; the bill contained an express guarantee to "every member in good standing [of the right] to vote for *or otherwise support*, the candidate or candidates of [their] choice" (emphasis added) in the same words as enacted in § 401(e); and the bill provided, in words in all pertinent respects identical to § 403 of LMRDA, "No labor organization . . . shall be required by law to conduct elections of officers . . . in a different form or manner than is required by its own constitution or bylaws except as otherwise provided by this title." 1 Leg. Hist. 373, 374-375, 378.

At the outset of the debate in the Senate, Senator Humphrey, a co-sponsor, spoke in favor of the bill, reiterating its underlying philosophy:

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[25] S. 1555, 86th Cong., 1st Sess., *reprinted* in 1 Legislative History of the LMRDA at 338-96 (NLRB 1959) (hereinafter referred to as "Leg. Hist.").

[26] Cox, *supra* n. 24, at 822.

[27] S. Rep. No. 187, 86th Cong., 1st Sess. 7 (1959), reprinted in 1 Leg. Hist. at 317-515.

> In reporting S.1555 the Committee on Labor and Public Welfare emphasizes a very important point which should be kept in mind during this debate:
>
> > The overwhelming majority (of unions) are honestly and democratically run. In providing remedies for existing evils the Senate should be careful neither to undermine self-government within the labor movement nor to weaken unions in their role as the bargaining representative of employees. [2 Leg. Hist. at 1035]

This philosophy was well-accepted by 1959. Only one amendment was offered to the election title that, in the sponsors' views, crossed the boundary of regulation designed merely to establish minimum standards. That amendment—a proposal by Senator Curtis that would have required union elections to be conducted by mail, with detailed procedures for the mailing and return of the ballots, *id.* at 1243—was defeated by voice vote after brief debate, *id.* at 1245. On April 25, 1959, the Senate approved the Kennedy-Ervin bill by a vote of 90-1. *Id.* at 1257.

In the House of Representatives, debate focused on the choice between the "Elliott" bill, reported by the House Education and Labor Committee, and the Landrum-Griffin" bill, offered as a substitute for the Elliott bill on the floor of the House by the chairman and ranking minority member of the House-Management Reform Subcommittee. *Id.* at 1645. With respect to Title IV, however, the two bills were "identical paragraph for paragraph, word for word," as proponents of both bills readily conceded, *id.* at 1554 (Rep. Udall); *see id.* at 1566 (Rep. Griffin). And both bills were in all respects pertinent here the same as the Kennedy-Ervin bill. *See id.* at 373-75, 378, 654-56, 659, 724-26, 729. The provisions of Title IV received scant attention in the House debate. On August 14, 1959, the House adopted the Landrum-Griffin substitute amendment, *id.* at 1691-92, and then approved the bill, *id.* at 1701-02.

(2) *Title I*

All of the provisions of Title IV we have discussed—§§401(e), (g) and 403—that left to the union membership the choice whether to permit or forbid campaign contributions by non-members were in place in the bill at the time Senator McClellan proposed his floor amendment to the Kennedy-Ervin bill that ultimately evolved into Title I. We recount the history of Congress' consideration of that amendment, in order to show how far-fetched is the notion that by enacting § 101(a)(2) Congress meant to legislate again on the subject of campaign financing, and to do so in a manner inconsistent with the decisions made in Title IV.

Senator McClellan prefaced the introduction of his proposed "bill of rights" with a lengthy speech in which he declared that he wished he could support the Kennedy-Ervin bill as it stood, but that he could not do so because it did not address all of the evils that had been unearthed by the investigations of the select committee he had chaired. He defined the root of the problem: while most unions were honestly and democratically run (2 Leg. Hist. 1097, 1098, 1099, 1100), some had been "invaded" and "infiltrated" by outsiders who had no interest in the workingman but rather had seized the reins of union power for nefarious purposes. As the Senator put it:

> [F]or more than 2 years members of the select committee, Members of Congress, and the citizens of this country generally have been shocked and nauseated by the disclosures of impositions and abuses which have been perpetrated upon the working people of many of our States by the thugs who have muscled into positions of power in labor unions and who masquerade [as] labor leaders and as friends of working people. . . .
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> • • • •
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> [I]t is the possession and the present lack of adequate regulation of these powers [of unions] which invites corruption and which makes the union movement at-

tractive in some instances and profitable for exploitation by the racketeers, the corrupt, and the unscrupulous.

No one knows how many thousands or even millions of workers are the victims of such exploitation .... Mark this well, however: no one is immune. *The invasion of unionism by thugs and hoodlums has gone much further and is more extensive than we may think.* • • • •

... The strongest support for ... the bill of rights provisions, should come from decent traditional union leaders. It will protect them from the assaults of those who would capture their unions ....

... Why do hoodlums and racketeers and the criminal element of the type I have indicated infiltrate unions? Why do they do it? There is something there which is attractive to them. What is it? It is power. What is it? It is the opportunity to get rich by the exploitation of other men. That is what it is. We are either going to deal with it now, or, if we fail to deal with it effectively, we are not meeting our responsibility.

The type of person I have referred to has no concern for the workingman. That type of person exploits the workingman. Some of these "bosses" have businesses of their own. They threaten strikes.

That is the type of person against whom we propose to legislate; not the good union leader; not the good union officers .... [*Id.* at 1097-99; emphasis added]

Having identified the problem, Senator McClellan described in generic terms the *means* by which control of unions could be wrested from these infiltrators: by the restoration of decision-making power *to the union members*:

I believe it reasonable to expect that the removal of temptation, the ending of autocratic rule *by placing the ultimate power in the hands of the members, where it rightfully belongs, so that they may be*

> *ruled by their free consent*, may bring about a regeneration of union leadership. I believe the unions should be returned to those whom they were designed to serve; they should not be left to the hands of those who act as masters. The union must be returned to their members, to whom they rightfully belong. [*Id.* at 1099; emphasis added]

Senator McClellan then explained his difficulty with the Kennedy-Ervin bill as it stood: while it legislated on specific subjects (elections, trusteeships, etc.), it did "not afford adequate sanctuary to the exploited and the oppressed" (*id.* at 1099); it provided no general protection to union members against reprisals for speaking out, or instituting lawsuits, or similar activities, by "the racketeers, the corrupt, and the unscrupulous" who had become entrenched dictators in some unions. And "[w]ithout such protection, other provisions of law may be of little benefit and meaningless" (*id.* at 1098).

Two of the provisions in Senator McClellan's proposed amendment were the forerunners of what ultimately emerged as § 101(a)(2). They provided:

> (2) FREEDOM OF SPEECH.—Every member of any such labor organization shall have the right to express any views, arguments, or opinions regarding any matter respecting such organization or its officers, agents, or representatives, and to disseminate such views, arguments, or opinions either orally or in printed, graphic, or visual form without being subject to penalty, discipline, or interference of any kind by such organization.
>
> (3) FREEDOM OF ASSEMBLY.—Every member of any such labor organization shall have the right to meet and assemble freely with any other members for the purpose of exchanging views and reaching decisions with respect to any matters pertaining to such organization or its officers, agents, or representatives, without being subject to penalty, discipline, or interference of any kind by such organization. [*Id.* at 1102]

Senator McClellan stated the purpose of his "freedom of speech" provision in the following terms:

> Without such protection in the exercise of his legitimate rights, the records of our committee's investigations show over and over again that a rank-and-file member dare not risk any opposition to a corrupt or autocratic leadership. If he does so, he may be beaten, his family threatened, his property destroyed or damaged, and he may be forced out of his job—all of these can happen and have happened.
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> • • •
>
> If they are protected by law, as I propose that we do, then no longer will a man have to cringe in terror because he may have spoken a word that offended a petty tyrant, or because he asked the wrong question.
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> • • •
>
> One may ask, 'Are union members ever interfered with?' Yes, they are. Union officers send to other places and bring in thugs and hoodlums. If a union member undertakes to speak, or to try to obtain the floor, they move over toward him and say, 'Be quiet, Bud. You are out of order.' And he had better be quiet, too. They mean business. [*Id.* at 1098, 1103]

The purpose of the "freedom of assembly" provision, Senator McClellan explained, was as follows:

> That gives union members the right to assemble in groups, if they like, and to visit their neighbors and to discuss union affairs, and to say what they think, or perhaps discuss what should be done to straighten out union affairs, or perhaps discuss the promotion of a union movement, or perhaps a policy in which they believe. They would be able to do all of that without being punished for doing it, as is actually happening today. [*Id.* at 1104]

Senator McClellan concluded his speech in support of his proposed "bill of rights" with this observation:

> Mr. President, I conclude by saying again that I think *we ought to start with the union man*, with the worker, and to relieve him from the oppression

> which has been thrust upon him in some places. We should vest in him again the power to do something to protect his rights. *We must give him the authority again to run his own union.* We must pass a law, such as the measure now proposed, which will enable him to prevent usurpation by would-be exploiters. [*Id.* at 1105; emphasis added]

In sum, Senator McClellan conceived his proposed protections of "freedom of speech" and "freedom of assembly" as safeguards against reprisals for speaking out against corrupt, entrenched union leaders—safeguards without which "other provisions of law may be of little benefit and meaningless" (*id.* at 1098). He suggested no other purpose for these provisions, nor did any of the other supporters.[28] The McClellan amendment was adopted by a vote of 47-46. *Id.* at 1119.[29]

Two days later, Senator Kuchel offered on behalf of himself and others a substitute for the McClellan Bill of Rights. The sponsors of the Kuchel amendment explained that their aim was to "remove the extremes raised by the [McClellan] amendment," *id.* at 1234 (Sen. Cooper)

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[28] Rather, other supporters echoed Senator McClellan's purpose. Thus, Senator Dirksen stated:

> The second item is free speech. . . . I shall never forget the occasion when two of my old high school classmates who were members of a union back home had to sneak into my home on a Sunday night and tell me what was going on in their own local.
>
> When I asked, "Why don't you get up on your hind legs and speak your piece?" They answered, "Yes; and have something happen to us?"
>
> I am not so naive as to believe that free speech is so easily attained in some of these organizations unless it is vouchsafed and safeguarded by something in Federal law. [*Id.* at 1116]

See also id. at 1109 (Sen. Curtis); 1115 (Sen. Goldwater); 1115 (Sen. Mundt).

[29] A motion to reconsider was defeated on a tie vote when Vice President Nixon broke the tie by voting against reconsideration. *Id.*

—to assure that the amendment would not "unduly harass and obstruct legitimate unionism," *id.* at 1232 (Sen. Church), and would not "make the Secretary of Labor run every union," *id.* at 1238 (Sen. Javits). Senator Javits, a co-sponsor of the Kuchel amendment (and an opponent of the McClellan amendment), warned that unless altered, the McClellan amendment "could destroy the bill." *Id.*

The Kuchel substitute combined the "freedom of speech" and "freedom of assembly" provisions of the McClellan bill of rights into the form in which they appear in § 101(a)(2) as enacted, and added the provisos that now appear, including the assurance that § 101(a)(2) will not be construed to "impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution." [*Id.* at 1230, 1232]

Senator Kuchel described the office of these provisos:

> [I]t seemed to us that the language in the amendment of the able Senator from Arkansas . . . was too broad. *The rule of reason is what we sought to apply.* By the language of our amendment . . . we attempt to provide for the rule of reason with reasonable restraints on the right of free speech. [*Id.* at 1231; emphasis added]

Or, as Senator Javits put it:

> [W]e are trying to perfect this language, so that it will do everything the Senator from Arkansas wanted to do, *but also will make sure it does not do more* . . . . [*Id.* at 1238; emphasis added]

The Kuchel amendment was approved by a vote of 77-14, with the proponents of the Kennedy-Ervin bill voting in favor of the amendment. Only those Republicans, such as Senators Curtis, Mundt, and Goldwater, who had unsuccessfully sought more extensive regulation of unions throughout the Kennedy-Ervin bill, including

Title IV, voted against the Kuchel amendment. *Id.* at 1239.[30]

The Kuchel amendment was thereafter approved, virtually verbatim, by the House of Representatives as part of the Landrum-Griffin bill, and was enacted into law.

(3) *The Lessons*

The lessons of this legislative history are as follows:

Title IV of the LMRDA, rather than Title I, "was the vehicle by which Congress expressed its policy" regarding the regulation of union elections. *Wirtz v. Hotel Employees*, 391 U.S. 492, 498. In enacting Title IV, "Congress weighed how best to legislate against revealed abuses in union elections without departing needlessly from its long-standing policy against unnecessary governmental intrusion into internal union affairs." *Wirtz v. Bottle Blowers Ass'n*, 389 U.S. 463, 470-71. Title IV's comprehensive interrelated set of prohibitions and rights, crafted through "extensive and vigorous debate" in two Congresses, states the legislative judgment as to "the extent to which government intervention in this most crucial aspect of internal union affairs was necessary." *Id.* at 471.

Title I, and § 101(a)(2) in particular, were not intended to upset that legislative judgment. The specific purpose of § 101(a)(2) was to fill a gap in the Kennedy-Ervin bill as reported out of the Labor Committee. That bill legislated with particularity on certain subjects, such as elections, but it did not contain generalized protection that would free union members from the fear of retribution should they speak their minds on *any* aspect of union affairs. That gap was filled by § 101(a)(2), albeit subject to the union membership's right to adopt "reasonable rules as to the responsibility of every member toward the organization as an institution." In filling the gap,

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[30] Senator McClellan voted for the Kuchel amendment, although he later stated that it was not "as strong as it should be." *Id.* at 1443-44.

Congress took care—as it had in developing Title IV—to afford to individual members the needed protection without unduly intruding on the ability of the membership as a whole to govern itself.

There is not a word in the debates that § 101(a)(2) was intended to elaborate upon the rules respecting campaign financing crafted in Title IV. Moreover, Senator McClellan's perception that outside infiltration was the source of the labor movement's problem, and that restoration of union member control was the solution, make it most unlikely that his proposal was designed to create a "right" to finance election campaigns through money furnished by outsiders.[31] And the emphasis the sponsors of the Kuchel amendment placed on minimizing governmental incursion into internal union affairs make it equally unlikely that § 101(a)(2) was intended to take from a union's membership the right, preserved to them in Title IV, to regulate outsider contributions.

These conclusions are confirmed—and the error of the decision below underscored—by this Court's decision in *Calhoon v. Harvey*, 379 U.S. 134. In that case, three would-be-candidates for union office argued that § 101(a)(1) of the LMRDA—the "equal rights" provision—constituted a prohibition on discriminatory eligibility rules for running for office. This Court rejected the argument because, as the Court explained, the argument misconceived the relative roles of Title I and Title IV in the statutory scheme. In the Court's words:

> Title IV, not Title I, sets standards for eligibility and qualifications of candidates and officials and provides its own separate and different administrative and judicial procedure for challenging those standards. [*Id.* at 138]

Similarly, here, "Title IV, not Title I" regulates the

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[31] In *Boilermakers v. Hardeman*, 401 U.S. 233, 246, a Title I case, this Court stated that Congress shaped the LMRDA "to allow unions to govern their own affairs."

subject of campaign finance, and to read § 101(a)(2) to reach that subject distorts the language and purpose of the section.[32]

C. The Attempted Analogy To The First Amendment

1. The court of appeals concluded that "the freedom of speech guarantee in the LMRDA serves to limit labor unions much as the First Amendment limits Congress in the restrictions that can validly be placed on campaign finance, . . ." (App. 17a). Section 101(a)(2) is, of course, part of a statutory "bill of rights" for union members whose essence is drawn from the Constitution's bill of rights. Moreover, Congress intended that section's free speech clause to restate the core value of the First Amendment—the guarantee of the right to speak one's mind without retribution. But the structure of the LMRDA and the language of § 101(a)(2) refute the lower court's view that the section is meant to incorporate the entire corpus of First Amendment law, including that which has developed subsequent to enactment to the LMRDA with respect to campaign finance.

The First Amendment is the Constitution's sole statement on the right of individuals to engage in—and the power of government to regulate—free speech and free association in the election context, as well as all other contexts. In contrast, the LMRDA employs a bifurcated

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[32] *See also Musicians Federation v. Wittstein*, 379 U.S. 171. In *Wittstein*, this Court held that § 101(a)(3) of the LMRDA, which requires that dues increases be approved by majority vote of the delegates to a convention, did not prohibit a union from weighting the votes of delegates according to the number of members in the local each represented. In reaching this conclusion, the Court emphasized that Title IV, while containing "elaborate statutory safeguards for the election of union officers," did not prohibit weighted voting in officer elections. *Id.* at 181-82. The Court in *Wittstein* did not view Title I as a blank page on which the courts could insert whatever requirements they thought useful in furthering "union democracy"; rather the Court refused to read Title I to impose particularized requirements that are not contained in the more "elaborate" Title IV.

approach as we have seen. Title IV is the primary means by which Congress safeguarded members' rights to participate in elections, and that Title deals in terms with campaign financing; § 101(a)(2) adds to those protections precisely what it states—a simple protection of the right to express one's "views, arguments or opinions."

Moreover, the First Amendment states a sweeping negation of government authority, overcome only by compelling need:

> "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble . . . ."

In contrast, § 101(a)(2) states three delimited rights and expressly preserves the right of unions to enact overriding "reasonable" rules in the interest of the union as an institution.[33] In both these regards § 101(a)(2) is narrower than the First Amendment.

Finally, Title I is a statute not a Constitution. There is no warrant whatever for taking post-1959 First Amendment case law expanding the Amendment's scope of application beyond that understood at the time of the LMRDA's enactment as a guide to the intent of the 1959 Congress and thus to § 101(a)(2)'s proper interpretation.

In sum, the extent to which § 101(a)(2) governs campaign financing cannot be ascertained by a simplistic equation between that section and the First Amendment as presently understood.

Again, this Court's Title I decisions confirm the conclusion. *Calhoon v. Harvey, supra,* recognizes that Congress did not equate § 101(a)(1)'s "equal rights" provision to the Fourteenth Amendment's equal protection

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[33] Indeed, if the statutory grant of the right to "express any views, arguments, or opinions"—the only § 101(a)(2) right involved here—were intended to be coextensive with the First Amendment, as the court of appeals thought, the portions of § 101(a)(2) defining other rights would be surplusage as those other rights plainly are incorporated in the First Amendment.

clause; and *Boilermakers v. Hardeman*, 401 U.S. 233, recognizes that § 101(a)(5), the "safeguards against improper disciplinary action" provision, is not the equivalent of the Fifth and Fourteenth Amendments' due process clauses. In each instance the statutory right may be generally modeled after a provision in the Constitution's Bill of Rights, but with respect to each Congress made a specific determination of the particular rights it wished to borrow from the Constitution. And in the case of § 101(a)(2) the right to receive campaign contributions—a right which was not even known to exist under the First Amendment as of 1959—was not one of the rights Congress intended to establish.

2. Even if the equation of § 101(a)(2) with the First Amendment were proper, and even if that equation included attributing to Congress an intent to incorporate developments in First Amendment law that occurred long after enactment of § 101(a)(2), USWA's ban on outsider contributions would not be unlawful. This is so for two reasons.

First, because USWA's rule bans contributions only by persons *outside* the polity, it is doubtful whether it implicates any First Amendment rights, and, in any event, it is supported by compelling interests—*a fortiori*, it is a "reasonable rule" within the meaning of the proviso to § 101(a)(2). *Buckley v. Valeo*, *supra*, upon which the court below relied, did not involve an analogous rule. *Buckley* involved limitations on the contributions that could be made *by members of the polity*—persons who have a right to vote for candidates, who would be governed by those elected, and who have First Amendment rights of their own to make expenditures to influence the outcome of federal elections. This case, by contrast, involves a ban on contributions by persons *outside* the polity—persons who do *not* have a right to vote in the election, who will *not* be governed by those elected, and who have *no* "rights" of their own (because the LMRDA confers rights only on "members") to make expenditures to influence the outcome of USWA elections.

The federal contribution limitation analogous to this case is not the provision adjudged in *Buckley*, but 2 U.S.C. § 441e, which prohibits candidates' acceptance of any contributions from non-resident aliens. Neither this Court nor any other has addressed the constitutionality of that provision, and there is thus extant no decision that suggests that USWA's rule would violate § 101(a)(2) by analogy to the First Amendment. Nor is it likely that a constitutional challenge, if mounted to 2 U.S.C. § 441e, would succeed. First, it is dubious at best whether persons outside the polity have a First Amendment right to make such contributions or that candidates have a right to receive such contributions. Be that as it may, our Nation's interest in assuring that those elected to federal office are not beholden to foreign interests surely constitutes a "compelling interest" justifying the denial to candidates of the resources otherwise obtainable from foreign aliens (cf. *Kleindienst v. Mandel*, 408 U.S. 753); and this would be true even in the case (indeed *especially* in the case) where a candidate is so bereft of appeal to the American polity that his *only* source of the revenues necessary to communicate his views is contributions from foreign interests.

If we are right about the constitutionality of 2 U.S.C. § 441e, the validity of USWA's rule under § 101(a)(2) follows *a fortiori*. That is so because the test under the provisos to § 101(a)(2) is whether the union's rule is "reasonable," not whether it serves a "compelling interest."

Second, USWA's rule would not offend the principles enunciated in *Buckley* (still assuming their application through § 101(a)(2) by analogy) even if the special consideration described above were not present. For at the threshold, the record of this case does not establish that the rule invades an interest that *Buckley* held protected.

Buckley declared that the "primary First Amendment problem" posed by contribution limitations is their

impact on "the *contributor's* freedom of political association," 424 U.S. at 24-25 (emphasis added)—a problem that does not exist in this case as the LMRDA confers no rights upon non-members. But the Court also suggested that there might be circumstances in which contribution limitations could have an unlawful impact on the First Amendment rights of others:

> Given the important role of contributions in financing political campaigns, contribution restrictions could have a severe impact on political dialogue *if* the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy. There is no indication, however, that the contribution limitations imposed by the Act would have any dramatic adverse effect on the funding of campaigns and political associations. [*Id.* at 21; emphasis added]

The record in this case is replete with evidence that candidates in USWA elections, including those running against incumbents, have been able to mount effective campaigns without depending upon outside contributions (*see* pp. 10-11, *supra*). Here, as in *Buckley*, "[t]here is no indication . . . that the contribution limitations imposed by [Art. V § 27] would have any dramatic adverse effect on the funding of campaigns." At most, as in *Buckley*, the "overall effect" of Art. V § 27 "is merely to require candidates . . . to raise funds" from different sources, 424 U.S. at 21-22, *i.e.*, from members of USWA.

The court below did not purport to find (as it could not on the record and in the present posture of this case) that USWA's rule "would have" the "dramatic adverse effect" that was *Buckley's* concern. Instead, the court below substituted this formulation:

> [T]he outsider rule in many instances *could unquestionably* operate to prevent candidates . . . from "amassing the resources necessary for effective advocacy." [App. 17a-18a (emphasis added)]

But speculation, unlike proof, does not establish the constitutional interest discussed in *Buckley*. Moreover, the

notion of the court below that such an interest arises simply because there may be "instances" of citizens (members) who could not mount an effective campaign without outsider contributions misapprehends *Buckley*. *Buckley* did not inquire as to "instances"; it looked to the effect of the contribution limitations upon "the funding of campaigns" generally. 424 U.S. at 21. There will always be *some* candidates who lack popular support, and for whom *any* contribution limitation may spell the difference between ability and inability to communicate a platform. In the context of USWA elections, the candidates most in need of outsider contributions are those who most lack membership support and who will, perforce, be most dependent upon the outsider-contributors; they represent, therefore, the greatest threat to the union's interest in assuring union leaders who are responsive only to the members. And as *Buckley* emphasized, the issue is not whether "limitations may have significant effect on particular challengers or incumbents," but whether they "will invariably and invidiously have adverse effects." 424 U.S. at 332. Since USWA's outsider rule will not have such effects, it can raise no First Amendment problem.

D. Conclusion

The basic conclusion we urge is that the "rights" conferred by § 101(a)(2) do not include a right to accept campaign contributions from outsiders. But even if that were wrong, a proviso added to § 101(a)(2) subordinates the rights of individual members to that of the entire membership to adopt "reasonable rules as to the responsibility of every member toward the organization as an institution." And under a statute whose predominant purpose is "to keep the union leadership responsive to the membership," a rule that forbids candidates from taking money from outsiders in order to preclude officers becoming beholden to outside bankrollers surely qualifies as such a "reasonable rule."

II. If The LMRDA Takes From Members Of A Union, Acting Through Democratic Processes, The Right To Preclude Non-Members From Participating In Internal Union Elections, It Deprives The Union Members Of Their First Amendment Right To Associate Together Freely

We have just shown that § 101(a)(2), properly construed, does not preclude the members of a labor union from deciding to bar non-members from contributing to candidates for union office. We now show that if it did, the section would to that extent deprive union members of their right to associate freely.

The starting point for analysis is this Court's decision last Term in *Democratic Party v. Wisconsin*, 450 U.S. 107. That case arose out of a conflict between a Democratic Party rule and a Wisconsin law each of which, in terms, established eligibility rules for participating in the Party's process for nominating a presidential candidate. The Party's rule permitted only those who had registered as Democrats to participate in that process, including in any primary which determined how delegates would vote at the Democratic Party Convention. Wisconsin's law, in contrast, while restricting eligibility to vote for (or to be) a delegate to members of the Party, entitled non-Democrats to vote in the Wisconsin Presidential preference primary, and required the Wisconsin delegates to the Party's Convention to distribute their votes among the candidates in proportion to the votes cast in the "open" primary. In sum, Wisconsin's law meant that while non-Democrats could not directly participate in the Party's affairs (either by voting for delegates or serving as delegates), they were entitled to influence the decisions of the Party by participating in the Presidential preference primary and thereby affecting the candidate preference ratios which delegates would be bound to follow.

Wisconsin initiated a declaratory judgment action to establish the supremacy of its law over the Party's rule and thus to require the Party to seat Wisconsin delegates who would vote at the Convention in accordance with the results of the State's own primary. The Wisconsin Supreme Court ruled for the State but this Court reversed, holding that the First Amendment freedom of association entitled members of the Party to decide for themselves who may participate in the organization's decision-making processes, and that Wisconsin's attempt to dictate to the Party eligibility rules for participation in the Party's nominating process deprived the Party members of this First Amendment right. The Court explained:

> [T]he freedom to associate for the "common advancement of political beliefs," necessarily presupposes the freedom to identify the people who comprise the association and to limit the association to those people only.[22]

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[22] "Freedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being." L.Tribe, American Constitutional Law 791 (1978) (Footnote omitted.) [450 U.S. at 122 (citations omitted)]

Thus, the Court concluded:

> "A political party's choice among the various ways of determining the makeup of a State's delegation to the party's national convention is protected by the Constitution." [26]

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[26] Cf. *Ripon Society, Inc. v. National Republican Party*, 173 U.S. App. D.C. 350, 368, 525 F.2d 567, 585 (en banc) ("[A] party's choice, as among various ways of governing itself, of the one which seems best calculated to strengthen the party and advance its interests, deserves the *protections* of the Constitution. . . .") (emphasis of the court), cert. denied, 424 U.S. 933 [450 U.S. at 124].

Finding that the State had no "compelling interests that justify the imposition of its will" upon Party members, *id.* at 124, the Court held that "[i]t is for the National party—and not the Wisconsin legislature or any court—to determine the appropriate standards for participation in the Party's candidate selection process." *Id.* at 124 n.27.

Under the construction of § 101(a)(2) by the court below, the statute deprives USWA members of the same right that was taken by Wisconsin from Democratic Party members: the right to "determine the appropriate standards for participation in" the union's decision-making process. *Democratic Party* teaches that, absent "compelling interests that justify the imposition of [congressional] will upon the [USWA membership]," 450 U.S. at 124, this interference with the right of union members to govern the affairs of their union is unconstitutional.

The court below thought it unnecessary to inquire as to the existence of a compelling governmental interest, believing that here, unlike *Democratic Party*, no constitutional right was at stake. The court reasoned that in *Democratic Party* Wisconsin had required the Party to allow non-members to *vote*, whereas here (under the court's construction of § 101(a)(2)), Congress has required USWA to allow non-members only to *contribute*. But this factual difference has no analytical significance: in each case the constitutional interest is the same—the right of members of a private association to "determine the appropriate standards for participation in" the association's decision-making processes. And in each case, the governmental intrusion is the same—taking from the private association's members the choice as to the role non-members may play in the organization's decision-making process. Thus, under *Democratic Party* the propriety of governmental dictation of non-member involvement depends upon the existence of a compelling governmental interest justifying that dictate.

In enacting the LMRDA, Congress did not itself identify *any* governmental interests—whether compelling or otherwise—for requiring that non-members be permitted to finance candidates for union office. No legislator even acknowledged that § 101(a)(2) would have that effect, and no legislator offered any justification for disabling the members of a union from deciding to ban outsider contributions (*see* pp. 29-35, *supra*). Moreover, the legislative record before Congress contained not even a hint of any governmental need to intrude upon the autonomy of union members to determine whether to permit outsider contributions; indeed, no one urged Congress to enact such a restraint, and no evidence was offered to Congress to justify such a restraint.

This is not a case in which we are in doubt as to the basic congressional purpose that underlies the statute. As we have seen, the governmental interest that prompted enactment of the LMRDA was to ensure that union leaders be responsive to their members. On the face of things, that interest does not seem furthered by prohibiting union members from protecting themselves against the financial influence of outsiders over their elections, and by that means over their officers. There nonetheless have been assertions in this case that the interest in responsive leadership is implicated here because a ban on contributions by outsiders would make it difficult for challengers to mount effective campaigns against incumbents. But even were such *post hoc* assertions somehow attributable to Congress, "governmental action does not automatically become reasonably related to the achievement of a legitimate and substantial governmental purpose by mere assertion" of the interest. *Bates v. Little Rock*, 361 U.S. 516, 525 (1960). Rather, to justify an infringement on First Amendment freedoms, "a 'relevant correlation' or 'substantial relation' between the governmental interest"

and the infringement must be shown. *Buckley v. Valeo*, *supra*, 424 U.S. at 64. And, the record of this case shows that such a "relation" could not be established.

The record demonstrates that without any outside participation whatsoever unions can and do hold free and fair elections in which non-incumbents are able to mount serious—and often-times successful—challenges to incumbents; indeed, the record reveals numerous instances within the USWA alone in which that is precisely what has happened (*see* pp. 4-5, *supra*).[34] That evidence demonstrates that it was *not* necessary for Congress to disable unions from barring outside contributions in order for Congress to achieve the aim of responsive union leadership.

Thus, here, as in *Democratic Party*, there is no compelling interest justifying the imposition of the Government's will on the association's members, and if § 101 (a) (2) does so it violates the First Amendment.

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[34] Of course, a ban on outside contributions may, from time to time, disadvantage a particular candidate who lacks support within his union but is heavily supported by outsiders. But the observations this Court made in *Buckley* about the impact of contribution limits is equally applicable here to the impact that a ban on outsider contributions would have:

> the practical impact of the [ban] . . . in any given election will clearly depend upon the amounts . . . that, for various reasons, the candidates in that election would otherwise have received [absent the ban] and the utility of these additional amounts to the candidates. To be sure, the limitations may have a significant effect on particular challengers or incumbents, but the record provides no basis for predicting that such adventitious factors will invariously and invidiously benefit incumbents as a class. [424 U.S. at 33]

In any event, we know of no compelling governmental interest in enabling would-be candidates who lack support within a union to nonetheless be able to run for office.

CONCLUSION

For the reasons set forth above, the decision below should be reversed, and the case should be remanded with instructions that (1) an injunction be issued that prohibits only the application of Art. V § 27 to contributions for the purpose of financing litigation (*see* pp. 14-15, *supra*), and (2) in all other respects judgment be entered in favor of USWA.

Respectfully submitted,

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APPENDIX

APPENDIX

STATUTORY PROVISIONS INVOLVED

Sections 101 and 102 of Titles I of the Labor Management Reporting and Disclosure Act of 1959, 29 U.S.C. §§ 411 and 412 provide as follows:

Section 101 [29 U.S.C. § 411]:

Bill of rights; constitution and bylaws of labor organizations

(a) (1) Equal rights.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

(2) Freedom of speech and assembly.—Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: *Provided*, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

(3) Dues, initiation fees, and assessments.—Except in the case of a federation of national or inter-

national labor organizations, the rates of dues and initiation fees payable by members of any labor organization in effect on September 14, 1959 shall not be increased, and no general or special assessment shall be levied upon such members, except--

(A) in the case of a local labor organization, (i) by majority vote by secret ballot of the members in good standing voting at a general or special membership meeting, after reasonable notice of the intention to vote upon such question, or (ii) by majority vote of the members in good standing voting in a membership referendum conducted by secret ballot; or

(B) in the case of a labor organization, other than a local labor organization or a federation of national or international labor organizations, (i) by majority vote of the delegates voting at a regular convention, or at a special convention of such labor organization held upon not less than thirty days' written notice to the principal office of each local or constituent labor organization entitled to such notice, or (ii) by majority vote of the members in good standing of such labor organization voting in a membership referendum conducted by secret ballot, or (iii) by majority vote of the members of the executive board or similar governing body of such labor organization, pursuant to express authority contained in the constitution and bylaws of such labor organization: *Provided*, That such action on the part of the executive board or similar governing body shall be effective only until the next regular convention of such labor organization.

(4) Protection of the right to sue.—No labor organization shall limit the right of any member thereof to institute an action in any court, or in a

proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further*, That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

(5) Safeguards against improper disciplinary action.—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

(b) Any provision of the constitution and bylaws of any labor organization which is inconsistent with the provisions of this section shall be of no force or effect.

Section 102 [29 U.S.C. § 412]:

Civil action for infringement of rights; jurisdiction

Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any

such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located.

Sections 401-403 (Title IV) of the LMRDA, 29 U.S.C. §§ 481-483, provide as follows:

Section 401 [29 U.S.C. § 481]:

Terms of office and election procedures

(a) Every national or international labor organization, except a federation of national or international labor organizations, shall elect its officers not less often than once every five years either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.

(b) Every local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.

(c) Every national or international labor organization, except a federation of national or international labor organizations, and every local labor organization, and its officers, shall be under a duty, enforceable at the suit of any bona fide candidate for office in such labor organization in the district court of the United States in which such labor organization maintains its principal office, to comply with all reasonable requests of any candidate to distribute by mail or otherwise at the candidate's expense campaign literature in aid of such person's candidacy to all members in good standing of such labor organization and to refrain from discrimination in favor of or against any candidate with respect to the use of lists of members, and whenever such labor organizations or its officers authorize the distribution by mail or otherwise to members of cam-

paign literature on behalf of any candidate or of the labor organization itself with reference to such election, similar distribution at the request of any other bona fide candidate shall be made by such labor organization and its officers, with equal treatment as to the expense of such distribution. Every bona fide candidate shall have the right, once within 30 days prior to an election of a labor organization in which he is a candidate, to inspect a list containing the names and last known addresses of all members of the labor organization who are subject to a collective bargaining agreement requiring membership therein as a condition of employment, which list shall be maintained and kept at the principal office of such labor organization by a designated official thereof. Adequate safeguards to insure a fair election shall be provided, including the right of any candidate to have an observer at the polls and at the counting of the ballots.

(d) Officers of intermediate bodies, such as general committees, system boards, joint boards, or joint councils, shall be elected not less often than once every four years by secret ballot among the members in good standing or by labor organization officers representative of such members who have been elected by secret ballot.

(e) In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 of this title and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof. Not less than fifteen days prior to the election notice

thereof shall be mailed to each member at his last known home address. Each member in good standing shall be entitled to one vote. No member whose dues have been withheld by his employer for payment to such organization pursuant to his voluntary authorization provided for in a collective bargaining agreement shall be declared ineligible to vote or be a candidate for office in such organization by reason of alleged delay or default in the payment of dues. The votes cast by members of each local labor organization shall be counted, and the results published, separately. The election officials designated in the constitution and bylaws or the secretary, if no other official is designated, shall preserve for one year the ballots and all other records pertaining to the election. The election shall be conducted in accordance with the constitution and bylaws of such organization insofar as they are not inconsistent with the provisions of this subchapter.

(f) When officers are chosen by a convention of delegates elected by secret ballot, the convention shall be conducted in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with the provisions of this subchapter. The officials designated in the constitution and bylaws or the secretary, if no other is designated, shall preserve for one year the credentials of the delegates and all minutes and other records of the convention pertaining to the election of officers.

(g) No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this subchapter. Such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates, and other expenses necessary for the holding of an election.

(h) If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this subchapter.

(i) The Secretary shall promulgate rules and regulations prescribing minimum standards and procedures for determining the adequacy of the removal procedures to which reference is made in subsection (h) of this section.

Section 402 [29 U.S.C. § 482]:

Enforcement

(a) A member of a labor organization—

(1) who has exhausted the remedies available under the constitution and bylaws of such organization and of any parent body, or

(2) who has invoked such available remedies without obtaining a final decision within three calendar months after their invocation,

may file a complaint with the Secretary within one calendar month thereafter alleging the violation of any provision of section 481 of this title (including violation of the constitution and bylaws of the labor organization pertaining to the election and removal of officers). The challenged election shall be presumed valid pending a final decision thereon (as hereinafter provided) and in the interim the affairs

of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(b) The Secretary shall investigate such complaint and, if he finds probable cause to believe that a violation of this subchapter has occurred and has not been remedied, he shall, within sixty days after the filing of such complaint, bring a civil action against the labor organization as an entity in the district court of the United States in which such labor organization maintains its principal office to set aside the invalid election, if any, and to direct the conduct of an election or hearing and vote upon the removal of officers under the supervision of the Secretary and in accordance with the provisions of this subchapter and such rules and regulations as the Secretary may prescribe. The court shall have power to take such action as it deems proper to preserve the assets of the labor organization.

(c) If, upon a preponderance of the evidence after a trial upon the merits, the court finds—

(1) that an election has not been held within the time prescribed by section 481 of this title, or

(2) that the violation of section 481 of this title may have affected the outcome of an election,

the court shall declare the election, if any, to be void and direct the conduct of a new election under supervision of the Secretary and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization. The Secretary shall promptly certify to the court the names of the persons elected, and the court shall thereupon enter a decree declaring such persons to be the officers of the labor organization. If the proceeding is for the removal of officers pursuant to subsection (h) of sec-

tion 481 of this title, the Secretary shall certify the results of the vote and the court shall enter a decree declaring whether such persons have been removed as officers of the labor organization.

(d) An order directing an election, dismissing a complaint, or designating elected officers of a labor organization shall be appealable in the same manner as the final judgment in a civil action, but an order directing an election shall not be stayed pending appeal.

Section 403 [29 U.S.C. § 483]:

Application of other laws; existing rights and remedies; exclusiveness of remedy for challenging election

No labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by this subchapter. Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this subchapter. The remedy provided by this subchapter for challenging an election already conducted shall be exclusive.

Respondent's Brief

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
Petitioner,

v.

EDWARD SADLOWSKI, JR., JOSEPH SAMARGIA, EDWARD SADLOWSKI, SR., LEONARD S. RUBENSTEIN, and JAMES MILLER,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Does USWA's rule absolutely prohibiting candidates for union office from soliciting or receiving monetary contributions and other support from non-members restrain campaign advocacy and association in violation of the free speech protection embodied in § 101(a)(2) of the LMRDA?

2.(a) Does USWA's rule absolutely prohibiting candidates for union office from soliciting or receiving monetary contributions and other support from non-members restrain the right to sue for redress of legal wrongs in connection with a union election campaign in violation of § 101(a)(4) of the LMRDA?

(b) If so, does such violation, as the District Court held, require invalidation of the rule in its entirety?

3. Does USWA's rule absolutely prohibiting candidates for union office from soliciting or receiving monetary contributions and other support from non-members violate the First Amendment to the United States Constitution?

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-395

UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC,
Petitioner,
v.
EDWARD SADLOWSKI, JR., JOSEPH SAMARGIA, EDWARD SADLOWSKI, SR., LEONARD S. RUBENSTEIN, and JAMES MILLER,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENTS

Respondents Edward Sadlowski, Jr., Joseph Samargia, Edward Sadlowski, Sr., Leonard S. Rubenstein and James Miller through undersigned counsel respectfully pray that the decision of the Court of Appeals be affirmed.

COUNTERSTATEMENT OF THE CASE

A. Introduction

The validity of USWA's outsider rule[1] cannot be determined in a vacuum, as USWA would have this

[1] The entire text of the rule, Article V, Section 27 of the USWA Constitution, appears at J.A. 488, *et seq.*; implementing regulations appear at J.A. 492, *et seq.* In relevant part, the rule states as follows:

> No candidate (including a prospective candidate) for any position set forth in Article IV, Section 1, and supporter of a candidate may solicit or accept financial support, or any other direct or indirect support of any kind (except an individual's own volunteered personal time) from any non-member. For purposes of this Section, the term non-member means any person who is either not eligible for membership under Article III or not in good standing or any foundation, corporation or other entity whose funds are derived in whole or in part from any person not eligible for membership under Article III or not in good standing. (J.A. 488)

Court do, but rather must be judged against the realities of union life with its already overwhelming advantages for incumbents over challengers in union elections. "[T]he full facilities of the national union, including the full-time field staff, are available for mobilization against those oppositionists bold enough to try for elective office." Edelstein and Warner, *Comparative Union Democracy*, p. 41 (1979). "To challenge an entrenched union president," leading labor reporter John Herling wrote years before the outsider rule was ever dreamed of, is "considered one of the more daring if not foolhardy exercises in labor politics." Herling, *Right to Challenge*, p. 301 (1972). The reasons for this are not hard to find.

To begin with, as this Court noted in *Local 3489, United Steelworkers* v. *Usery*, 429 U.S. 305, 311 (1977), there is no permanent opposition party within a union. Instead of the usual two party system which serves to equalize electoral opportunities in public elections, unions have a one party system with the incumbent officers controlling the only party organization in existence and any challenger having to build an ad hoc organization for the campaign ahead. "[T]he full-time officers collectively, under the direction of the top officer, constitute the sole political machine for the preservation of their offices and power." Edelstein and Warner, *supra*, p. 39 (1979). As this Court made clear in *Buckley* v. *Valeo*, 424 U.S. 1, 31, n. 33 (1976), even with a two party system "political reality" requires recognition of the "significant advantages" of the incumbent. How much more is this true where there is only one party and the incumbents' control of the one party bureaucracy gives them overwhelming advantages and makes challenge, in Herling's words, "daring if not foolhardy."

If the incumbents had no other advantage than their control of the staff representatives and other union employees, that would alone be an almost insurmountable obstacle for the challengers. The paid staff, owing their

jobs to the officers, are at their beck and call. In the USWA, except for about thirty elected positions, the President appoints the more than 1500 office and field staff. Salaries and expenses for all USWA personnel in 1978 totaled $37,389,995.97 (J.A. 141). If, as this Court said in *Hall* v. *Cole*, 412 U.S. 1, 13 (1973), "paid union counsel [are] at their [officers'] beck and call," this is even more so in the case of non-professional staff representatives with far more limited opportunities for alternative employment. The staff not only provides, as we show hereinafter, the funds for the incumbents' campaign, but they provide the backbone of the incumbents' campaign organization (J.A. 152).[2] As one USWA Director described it, "[t]he paid staff of the USWA are (almost without exception) the political foot soldiers" of the incumbents. "[T]he appointed staff is a ready made campaign organization, strategically located throughout the United States and Canada with close personal ties in virtually every local union." (J.A. 142).[3]

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[2] USWA blandly suggests (p. 11, n.11) that "staff employees may not . . . engage in political activities on union time. 29 U.S.C. § 481(g)." But USWA counsel know as well as we do that this provision has been rendered meaningless by the Department of Labor's regulations which permit staff representatives to engage in "campaigning incidental to regular union business," 29 CFR § 452.76, and, worse yet, that the Department takes the position that, because "distinctions between union time and personal time are difficult to make" and staff representatives "for the most part have no set hours," the Secretary cannot find that staff campaigning "may have affected the outcome" of the election (see *Sadlowski* v. *Marshall*, C.A.D.C. No. 79-1461, J.A. 55-56, 157). Thus, there is no practical bar to staff campaigning and, of course, no bar whatever to staff funding the incumbents' campaign.

[3] Incumbents seldom have any need for observers or difficulty in recruiting them. Thus, in those few instances where the local officials conducting the election are not pro-administration, the staff representatives serve as observers to assure that the election is fairly conducted. Challengers are confronted with the need to obtain funds both for discovering where and when the election will be held and recruiting observers to prevent election fraud (J.A. 402).

But there is far more going for the incumbents against the challengers than control of the staff. The officers, for example, control the union newspaper paid for by union dues and regularly sent to every member at union expense. Whatever restrictions there may be on incumbent officer abuse of the newspaper for campaigning during the actual election period, conditioning of the membership during the years prior to the campaign can hardly be erased during the months of the election campaign (J.A. 153). Pictures and stories of incumbent officers praising each other and snide attacks on anybody who might be considering running against the incumbents, cannot help but carry over to the election booth. Seidman, "Some Requirements for Union Democracy," Lester, *Labor: Readings on Major Issues*, p. 164 (1965).

Then, too, "the incumbents have ready access to the members. The officers can find excuses in official business to appear before the members and to contact members personally. They have opportunity and ability to develop names, addresses and telephone numbers of union members so they can mail out campaign literature or organize telephone campaigns. The law requires equal access to membership lists, but there is no practical equality when the incumbent administration includes the secretary treasurer of the union."[4] "The non-elite

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[4] Affidavit of Professor Clyde W. Summers of the University of Pennsylvania (J.A. 146, 153-154). Professor Summers is the admitted top legal scholar on union democracy in the country and was one of the experts selected by then Senator John Kennedy described by Petitioner (Brief, p. 24) to provide advice and guidance to the Senate in its consideration of the legislation which ultimately became LMRDA (J.A. 150). His affidavits in this case set forth in eloquent detail the incredible incumbent advantage over the challenger and his conclusion that the added outsider rule "virtually guarantees that incumbents will be insulated from electoral challenge" (J.A. 163). Or, as put by H. W. Benson, who devotes his life to furthering union democracy as Executive Director of the Association for Union Democracy, "If a rule barring receipt of campaign contributions and other electoral

candidate . . . faces not only an opponent, but the resources of the union itself."[5]

The incumbents in the USWA have taken full advantage of the one party system and have built their own one party bureaucracy with zeal. I. W. Abel, former USWA President, has testified that the union is run by its "official family" which consists of the international officers and the district directors who automatically "support each other" against any challenger with financial, legal, and other assistance (Ex. A, Pltfs' First Req. for Adm., pp. 5-8). He testified to the existence of a continuing fund called Steelworkers for Continued Leadership to which directors and staff are solicited for contributions and which is readily available to the official family (Ex. A, Pltfs' First Req. for Adm., pp. 11-12). Mr. Abel also testified that a union member who challenged an incumbent and lost should accept the verdict of the one party bureaucracy rather than appeal to the government under LMRDA "even though there was ballot box stuffing" (Ex. A, Plfts' First Req. for Adm., pp. 16, 36-37). It is hardly surprising, therefore, that no candidate has, in the past four decades, ever successfully run for one of the Union's International offices without majority support by the USWA's Executive Board. The single instance in USWA's 45-year history in which an incumbent President was defeated for reelection occurred in a 1965 "palace revolt" when I. W. Abel, himself then the incumbent Secretary-Treasurer, defeated the incumbent President David MacDonald; Abel was supported

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assistance from nonmembers had been in effect in the Mine Workers election supervised by the Department of Labor in 1972, I firmly believe that W. A. 'Tony' Boyle would still be President of the UMW" (J.A. 172). We call the Court's special attention to both the original and supplemental affidavits of Summers (J.A. 146, 407) and Benson (J.A. 164, 372).

[5] James, *Union Democracy and the LMRDA: Autocracy and Insurgency in National Union Elections*, 13 Harv. Civ. Rts. Civ. Lib. L. Rev. 247, 265 (1978).

by a majority of USWA's executive board and District Directors (J.A. 168, 414).

The picture is practically the same at the District Director level.[6] Most District Directors are not even challenged in quadrennial elections; those who are most often win (J.A. 413-15). USWA misleadingly lumps the *very few* successful candidates openly critical of USWA's top officers—as was Sadlowski in his successful District campaign—with those who opposed incumbent District Directors without open criticism of USWA's top officers.[7] Even the latter group is extremely small when compared with the total number of times District Director positions have been up for election in USWA history (J.A. 413-414); the former group is much smaller. Prior to 1977, the only candidate ever to be elected District Director despite open criticism of the union's top officers was Sadlowski, and that, as noted below, occurred only in a rerun under the Secretary of Labor's supervision. In 1977, as part of the Sadlowski slate's challenge to the official family, two other persons openly critical of USWA's top officers were elected to District Director positions (J.A. 414). Thus, in USWA's history through 1977, *only three* candidates openly critical of USWA's top officers have ever been elected to District Director positions.[8]

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[6] As shown in the text, USWA's claim of a "long history of contested elections" in which "incumbents and other administration-supported candidates frequently have been defeated" (USWA Brief, pp. 3-4, n.2) is contrary to fact.

[7] This Court has recognized that "turnover in offices may result . . . from a competition limited to candidates who offer no real opposition to an entrenched establishment." *Local 3489, United Steelworkers, supra*, 429 U.S. at 311.

[8] In the USWA's 1981 election, eleven District Director positions were not contested, and none of the Union's top five International officers was even challenged. 107 LRR 39. Notably, however, the two District Directors who had been elected in 1977 on anti-administration platforms—Balanoff and Linus Wampler (J.A. 137, 140-41)—were defeated by "official family" candidates who received substantial campaign support and financing from the Union's hierarchy.

With such a marshalling of incumbent advantages and such a history of incumbent domination, one might wonder why it was deemed necessary, even in the interests of incumbent self-perpetuation, for the official family to propose and put through a rule barring monetary contributions and other support from non-members. We turn now to the background and reason for that rule.

B. Background of USWA's Outsider Rule

USWA's outsider rule, added to its Constitution in 1978, is a direct outgrowth of USWA elections in the 1970's in which Chicago Steelworker Ed Sadlowski mounted serious challenges to USWA's official family. In 1973, Sadlowski first ran for District Director of USWA's largest District, District 31, against the incumbent Sam Evett whose reelection was supported financially and otherwise by USWA's incumbent administration. After being counted out in the 1973 election, Sadlowski pursued a challenge and persuaded the Secretary of Labor to sue to set the election aside and intervened in the Secretary's suit (J.A. 125-126). The Secretary's suit resulted in a supervised rerun in 1974 which Sadlowski won by a two-to-one margin despite the official family's financial support for his opponent (645 F.2d at 1116; J.A. 126, 339-340). Thereafter, in 1977, a slate of candidates led by Sadlowski mounted the first serious, insurgent challenge in USWA history to USWA's official family for the USWA presidency and other top offices.

USWA is, as recited by Petitioner, a labor organization with 1,300,000 members. USWA's elections for President, other top unionwide offices, and for District Director positions are carried out by referendum. Because USWA's 1.3 million member electorate is dispersed throughout the United States and Canada, the cost of effective campaign advocacy, particularly in union-wide elections for the USWA presidency and other top offices, is inevitably high. In such elections, incumbent candi-

dates have powerful advantages as discussed above.[9] Incumbent candidates in the USWA, as in other unions, have relied heavily on monetary contributions and other campaign support from those on the union's payroll.[10] This was so in the elections for District 31 Director in which Plaintiff Sadlowski challenged the administration-backed incumbent who had the support of practically the

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[9] In the 1976-1977 election campaign, litigation on behalf of the Sadlowski slate was necessary to offset even partially the enormous advantages enjoyed by the official family candidates. Thus, Sadlowski filed suits (1) to assure the neutrality of the USWA newspaper *Steelabor*, (2) to gain access for the Sadlowski slate to polling information which had previously been withheld, and (3) to preserve the membership status of one of Sadlowski's running mates whose local union was being disbanded (J.A. 349-350). In this litigation, the Sadlowski slate was represented by Joseph L. Rauh, Jr., who along with attorneys from the Association for Union Democracy instituted these legal actions and filed several complaints with the Department of Labor, 645 F.2d at 1117. Like most insurgents, Sadlowski and his slate members did not have sufficient funds to pay counsel at his regular hourly rate for services rendered. In rendering legal services for Sadlowski both in connection with the 1973 District 31 election and the 1977 election, Mr. Rauh necessarily utilized his office, office supplies and office staff, and did so without payment of his regular rate and indeed, of any fee at all (J.A. 340-41). This, the courts below recognized, would have been impossible under USWA's outsider rule.

[10] As noted in the Affidavit of Professor Clyde Summers, "there is no Hatch Act for Union employees" (J.A. 152). Thus, District Judge Hart correctly observed that "the union people directly under them . . . wouldn't dare not contribute to them if they asked them in most cases. . . ." (January 23, 1981 hearing, p. 29). Indeed, a century ago, this Court in upholding the constitutionality of a precursor of the Hatch Act reached the identical conclusion:

> "If contributions . . . may be solicited by others in official authority it is easy to see that what begins as a request may end as a demand. . . . Contributions secured under such circumstances will quite as likely be made to avoid the consequences of personal displeasure of a superior, as to promote the political views of the contributor,—to avoid discharge from service, not to exercise a political privilege." *Ex Parte Curtis*, 106 U.S. 371, 374 (1882).

entire USWA staff in the District (J.A. 125-126, 338-340). It was, if possible, more so in the 1976-1977 campaign for USWA's top offices in which Sadlowski and his slate opposed a slate led by Lloyd McBride, the official family's candidate to succeed retiring President I. W. Abel.

In the 1977 election, the McBride slate relied almost exclusively on money from incumbent officers and staff. This reliance was confirmed by reports of campaign contributions which were exchanged by the two slates as a result of campaign-engendered litigation (J.A. 346). According to these reports, as of early January 1977 the McBride campaign had received a total of $182,000, *more than 90% of which was obtained from "contributions" from officers and union staff* (J.A. 173, 347-348).[11] Analysis of McBride's list of contributors further revealed that approximately one-third of the Steelworkers' staff contributed to the McBride campaign, that most of the incumbent District Directors "contributed" at least $1,000, that other staff ordinarily paid $500 each, that in some USWA Districts every single staff member contributed an equal amount, and that in several instances staff contributions to the McBride campaign were made in "installments" (J.A. 173-74, 347-48).

As challengers to the administration-backed candidates, Sadlowski and his slate enjoyed scant support from the staff. Though three of his running mates were staff members, Sadlowski and his slate received less than $5,000 from the Union staff (J.A. 345, 128). Indeed, less than 3% of the Union's 1,500 officers and employees supported his candidacy. In order to mount a viable campaign among the USWA's more than 1.3 million members, Sad-

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[11] USWA's conclusory assertion—with little or no basis in fact—that campaign funds can readily be raised from among rank and file members is belied by the undisputed fact that McBride, with virtually all of the USWA staff available to him to solicit funds from rank and file members, raised considerably less than 10% of his campaign revenues from rank and file USWA members during the 1976-77 election campaign (J.A. 348-49, 324-26).

lowski relied upon contributions from rank and file members, and also from family, including his father and sisters, and from among members of the general public through mail solicitations, raffles, receptions and dinners (J.A. 350-353, 127-129).[12] Despite the McBride slate's massive support from USWA staff, *Sadlowski and his slate received a quarter million votes and captured the largest vote ever cast within USWA for insurgent challengers* (J.A. 353-355, 129). The attack on outsiders came swiftly.[13]

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[12] USWA's assertion (Brief, p. 4) that solicitation of support from outside the union was a new phenomenon in the AFL-CIO is incorrect (Summers Affidavit, J.A. 156-158); notably, by claiming the phenomenon to be novel in the AFL-CIO, USWA avoids comment upon outside support for the long struggle for democracy in the United Mine Workers without which Tony Boyle could not have been ousted. Affidavit of Clyde W. Summers, J.A. 158; Rauh, "Outsiders' Assistance in Union Elections", *New York Times*, January 17, 1977 ("Tony Boyle would be president of the United Mine Workers today, instead of a lifelong resident of a Pennsylvania prison, if the public—what Boyle and Abel and Meany and Shanker and Finley call 'outsiders'—had not rallied to the support of the reform group.") (J.A. 40). The McBride campaign itself received cash contributions from non-members. Thus, of the 10% of McBride's reported campaign revenues in 1977 which did not come from USWA's officers and staff a substantial portion of that amount was received from officers of other unions and high officials in the AFL-CIO, including a contribution from its current President Lane Kirkland (J.A. 348-49).

[13] Shortly after the 1977 election, the USWA through the very officers who had defeated the Sadlowski slate and represented by the same counsel who have appeared in this case, sued the Association for Union Democracy ("AUD") and various foundations which had made grants to AUD to make possible an honest election. USWA sought to enjoin all AUD activities in future USWA elections, including election-related litigation. *McBride* v. *Rockefeller Family Fund* (S.D.N.Y., No. 78 Civ. 1762). McBride and his fellow USWA officers characterized the litigation which had occurred during and after the 1976-77 election campaign, see n.9, *supra*, as politically motivated:

> "Several lawsuits were filed during the course of the 1977 election campaign. Defendant AUD represented Sadlowski

Though not disputing that the rule was an outgrowth of the 1977 election, USWA attempts to cast it as an attempt by USWA's "members . . . to insure that high union-office holders will not be beholden to outside interests but will, instead, be beholden only to the interests of the union members they are elected to serve" (Brief, pp. 2-3). This benign characterization is belied by the rule's origin and history.[14] After the election, McBride—

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slate members in a number of lawsuits initiated by them, and defended Sadlowski in a suit brought against him. *All of this litigation* related to the election and *promoted the candidacy of members of the Sadlowski slate.*" (Emphasis added) (Complaint ¶ 26).

The Complaint was subsequently dismissed, 101 LRRM 2576 (S.D.N.Y., 1979), which decision was affirmed by the Court of Appeals, 612 F.2d 34 (C.A. 2, 1979), *cert. denied*, 445 U.S. 951.

[14] In its first brief to the District Court, USWA contended that the large number of resolutions submitted by local unions to the USWA 1978 Convention in support of a rule banning outsider campaign support indicated a groundswell of "interest and concern among USWA members" (Memorandum of USWA in Support of Motion to Dismiss, p. 7). Plaintiffs then pointed out that the resolutions were "form" submissions, that all but one came from three pro-McBride USWA Districts, that more than 95% of the Locals who submitted these form resolutions had voted for McBride, and that no resolutions on the issue came from any of the large USWA Districts in Chicago, the West Coast or the "Steel Valley" in Pittsburgh (J.A. 188-189). Ultimately, USWA conceded, through a declaration filed by Lynn Williams, McBride's running mate, that the "outpouring" of resolutions from his home district "no doubt" "resulted from his conversations" with District 6 Director Stu Cook (J.A. 299). Williams further admitted that the process of preparing and soliciting form resolutions in the other two USWA Districts "was similar to the process I have described with respect to District 6" (J.A. 300). In its brief here, USWA abandons totally any suggestion of a spontaneous groundswell of membership concern and acknowledges that its officers "tendered resolutions proposing such an amendment for consideration by local unions", self-servingly portraying this from-the-top-down solicitation as a "procedure often used within USWA to gauge membership sentiment . . . ." (Brief, p. 7). While USWA recites that the members in 225 of the locals to which resolutions were tendered

through his running mates and the USWA staff—began soliciting "form" resolutions from pro-McBride USWA locals to be submitted to the USWA's 1978 Convention urging adoption of a rule barring candidates from receiving outside assistance. The rule was drafted by USWA's General Counsel Bernard Kleiman, a strong McBride proponent who had recused himself from Sadlowski's election-related litigation, so that he could openly support the McBride election effort (J.A. 379). Kleiman began preparing constitutional language to bar outsider assistance in future USWA elections long before the Convention convened (J.A. 361-364). The rule drafted by Kleiman was presented to the USWA Convention by its Constitution Committee, the Chairman and Secretary of which were both running mates of McBride (J.A. 363-364). The Chairman of the McBride Team Campaign Committee, Bruce Thrasher, and McBride himself both spoke at considerable length to the Convention urging adoption of the "outsider" rule (J.A. 364). Over the objections of Sadlowski's successor as District Director of District 31, James Balanoff, who argued that the rule was illegal and unconstitutional, McBride declared that the rule and its

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voted to submit resolutions recommending a ban on nonmember contributions, this Court has previously recognized that such meetings are typically attended by a mere "handful" of members. See *Local 3489, United Steelworkers* v. *Usery*, *supra*, 429 U.S. at 307, 312 (1977).

If USWA were truly concerned that its elected officials would not be beholden to outside interests, the rule would have been applicable to local union elections where the electorate is smaller and the potential for improper outside influence is substantially greater. A rule applicable only to local elections would restrict effective advocacy far less than in elections where the electorate numbers in the tens of thousands or is spread across large geographical areas and plainly would not be nearly as discriminatory in its effects where the incumbents do not enjoy exclusive access to substantial campaign funds obtained from hundreds of staff members. But, as noted above, the rule adopted applies only to candidates for International and district director offices, not local unions.

implementing regulations had been adopted (J.A. 96-97, 144-145).[15]

The rule leaves undisturbed the incumbent's traditional advantage of access to "contributions" unlimited in amount and campaign support from persons on the union's payroll while stripping insurgents such as Sadlowski of sources of financial support essential to effective campaign advocacy.

C. The Practical Effects of the Rule

It would be difficult to conceive of a rule which would sweep more broadly than the outsider rule drafted and promoted by the USWA hierarchy. Under the rule and its accompanying regulations, no candidate or supporter of *any* candidate could *solicit or accept* financial support or *any* direct or indirect *support of any kind* (except an individual's own volunteered personal time) from *any* non-member. Thus, in addition to disqualifying candidates who accepted cash contributions from their spouses, parents, brothers and sisters and friends and neighbors, under the rule a candidate could not borrow any money from a friend (J.A. 73-74), could not hold campaign dinners, "beer busts" or other fund raisers attended by non-members (J.A. 75), could not sell raffle tickets to one's non-member children (J.A. 76), and could not accept the campaign help of one's non-member father who paid for

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[15] USWA's continued reference to its rule as one adopted through "domocratic processes" (Brief, pp. 1, 3, 19, 21, 22) is not without irony. "[T]he convention [of the Steelworkers], which is supposed to be the union's highest legislative institution, is in fact firmly under the thumb of the administration, in considerable measure because staff personnel appointed by the president constitute a large proportion of the delegates. The great size of the convention, the brief time available for discussion, and the fact that all convention committees are appointed by the president all contribute to the failure of the convention to fulfill its ideal role." Ulman, *The Government of the Steel Workers' Union*, foreword by Cornell Professor Walter Galenson (1962), p. viii.

his own meals and travel while distributing campaign literature for his son at various plants (J.A. 183-84).[16] With the rule in effect, a candidate could not "pass the hat" at a campaign rally attended by non-members or use a friend's basement or vacant storefront as a rent-free campaign office, could not use one's lodgehall or parish basement to hold meetings or rallies without paying the full market rental (J.A. 73), and could not use a non-member spouse's automobile for campaign travel. A candidate could not use a typewriter or duplicating machine loaned to his campaign by his brother without paying him the full market rental, and a candidate would be prohibited from accepting campaign pamphlets printed at cost by a friend or neighbor (J.A. 73).

The exception for a non-member's "volunteered, personal time" is so niggardly, USWA's implementing regulations confirm, as to preclude the non-member's use of his or her own "office supplies, office space, or of clerical, secretarial, or professional services . . . in conjunction with his or her own volunteered service to a candidate. . . ." (J.A. 494). If a candidate's brother or sister was an amateur photographer, campaign photographs could not be taken without paying the market value of the film, developing and reproduction costs. The rule would similarly prohibit a candidate from accepting volunteered assistance from a neighbor-bookkeeper who used adding machines or checkwriters in his home to prepare campaign checks, books or financial reports.

But the rule was intended to and had another insidious effect, namely, to strip all USWA insurgents of access to counsel. As described above, USWA incumbents have had

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[16] The breadth of the rule is best illustrated by the claim of Edward Sadlowski, Sr., a plaintiff herein. Though the elder Sadlowski was a charter member of the USWA, remained a USWA member for thirty-two years prior to his retirement from the mills, and receives a pension, the terms of which are negotiated by USWA's officers, the rule would bar him from contributing to his own son's campaign (J.A. 184).

ready access to USWA-member staff and retained attorneys who will protect their interests in election related litigation or who will recuse themselves, such as USWA General Counsel Kleiman did in 1977, to engage in more obvious campaign activities. USWA incumbents, therefore, have little need to retain or consult with attorneys who are not USWA members.[17] Consequently, the outsider rule's bar on use of professional services at less than prevailing market rates and on use of a professional's office, staff and supplies in conjunction with volunteered services was of no consequence to the official family. But, as in most unions (J.A. 158),[18] USWA insurgent candidates have found it essential to retain or obtain the services of non-member attorneys to protect and preserve their interests in the election campaign and election-related litigation.[19] As in the case of the legal services made available to Sadlowski in his 1973 and 1974 District Director elections and the legal services provided to the Sadlowski slate in the 1977 International election, such legal services are often provided at reduced rates, for no fee at all or on a contingent fee basis (see n. 9,

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[17] Notably, Counsel of Record for the USWA in this Court holds membership in the USWA (J.A. 240). Thus, under the rule, USWA candidates could accept his services and unlimited cash contributions from him or other USWA counsel without fear of disqualification or other discipline.

[18] Professor Summers has commented on the importance of counsel to insurgent challengers:

> "In nearly every situation where an insurgent group has been successful there has been a dedicated lawyer who has contributed hundreds of man hours to the cause. In dollar value terms this has often been the largest single contribution to the campaign. Without this contribution, the opposition group would not have had the smallest chance of success in many cases" (J.A. 158).

See also, *Hall* v. *Cole*, 412 U.S. at 13.

[19] Even the affidavits submitted by the USWA confirm that virtually every successful non-incumbent candidate for District Director utilized the services of non-member attorneys (J.A. 355-357; ¶ 33).

supra). The outsider rule was intended to and plainly had the effect of stripping Sadlowski and other insurgents of essential access to non-member counsel.

D. The Proceedings Below

Plaintiffs challenged USWA's rule as violating the First Amendment's protection of free expression and association, the National Labor Relations Act, and LMRDA. All four judges in the courts below recognized that, contrary to USWA's benign characterization of it, the USWA rule was but a thinly veiled self-perpetuation device conceived and implemented by USWA's top officers in an effort to insulate themselves from further meaningful electoral challenge. Thus, District Judge George L. Hart, Jr., correctly observed:

> "It seems to me that your constitutional provision would keep an ordinary member from ever becoming a viable candidate to start with and, if he can't become a viable candidate to start with, then it will be impossible to raise funds, to bring a lawsuit against the union, as I see it.
>
> * * * *
>
> And it may be that I don't have jurisdiction, but I declare, the provision in the constitution is outrageous to me" (Tr. pp. 25, 29).

These views were echoed by a unanimous Court of Appeals panel (Circuit Judges MacKinnon and Robb and District Judge Robinson):

> "In our view the outsider rule's blanket prohibition on outside contributions for traditional 'campaign purposes', . . . violates the rights of the candidate and his supporters to free speech and association as guaranteed by Section 101(a) (2) and *flies squarely in the face of the intent of the LMRDA to 'insure union democracy.'* . . .
>
> . . . . *We cannot conceive of anything that would do more to inhibit union democracy than to prohibit insurgent candidates from receiving financial support from those outside sources that are not prohibited by*

> *the statute. . . .*" (645 F.2d at 1122-1123) (Emphasis added).

The courts below found that the Steelworkers' rule violated both the right-to-sue and the freedom of expression and association embodied in the Bill of Rights for union members contained in Title I of the LMRDA, 29 U.S.C. 411(a)(4) and (a)(2). Accordingly, under § 101(b) of the Act, which directs the courts to invalidate provisions of union constitutions contrary to the Bill of Rights guarantees, the courts below struck down the USWA rule in its entirety.

During the pendency of the parties' summary judgment motions in the District Court, USWA counsel sought to avoid invalidation of the rule as an infringement of the § 101(a)(4) right-to-sue guarantee by obtaining an "advisory ruling" from USWA's Campaign Contribution Administrative Committee which had been hand picked by the USWA hierarchy to administer the rule.[20] The

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[20] Despite the clear language of the rule barring outside support of "any kind" and the rule's plain intent to strip Sadlowski (and other insurgents) of access to counsel, the CCAC attempted to distinguish support for election-related litigation activity from other campaign support. Its effort was oblivious to the terms of the rule and, at any rate, concluded by leaving the rule's application to election-related litigation in doubt. Thus, on the one hand the CCAC stated that "actions of a candidate seeking political office are qualitatively distinguishable from actions at law"; on the other, it remarked that its ruling was made "in general terms and in response to a broad inquiry," which CCAC acknowledged, could be "misconstrued or distorted" (J.A. 457, 458). Thus, rather than squarely stating that non-member funds and services could be accepted by candidates for use in litigation without fear of disqualification or union discipline, the CCAC stated that it would "deal with these questions whenever they arise on a case-by-case basis" (J.A. 458). Moreover, the CCAC expressly declined to decide whether a member-candidate could be disqualified if he brought a suit which the Committee later found was not "*bona fide*," stating that the Committee would "look at such a case on its facts if it arises." *Id.*

District Court, in invalidating the rule under § 101(a)(4), found the CCAC's opinion contrary to the "clear language of the rule and its implementing regulations"; found that the CCAC opinion "could result in confusion and violation of its terms by unschooled members who are required to comply with it"; and noted that the CCAC ruling "leaves in doubt whether member-candidates can be disqualified or disciplined for accepting funds, retaining counsel and bringing suit which the Committee or the Union later determined was not *bona fide*." 507 F.Supp. at 624.[21]

The District Court rejected USWA's contention, raised by its Rule 59 request for reconsideration, that the rule's violation of § 101(a)(4) should be isolated from the remainder of the rule:

> "The unlawful effects of the rule cannot be separated from the rule as a whole. Because the application of the rule to litigation support is not 'functionally independent' from the balance of the rule, as is obvious from its text and because the confusion on what can and cannot be done under the rule will have a chilling effect on guaranteed rights of member candidates, the entire rule must be declared invalid and of no force and effect, pursuant to Section 101(b) of LMRDA (29 U.S.C. 411(b))." 507 F.Supp. at 625.

Accordingly, the District Court declared the outsider rule to be inconsistent with the right-to-sue guarantee, and pursuant to LMRDA § 101(b) enjoined USWA from implementing or enforcing it. 507 F.Supp. at 627.

Contrary to USWA's intimation (Brief, 12), the District Court did not view the rule, apart from its impingement upon the right to sue, as nonobjectionable. Rather, the District Court referred to the entire provision as "outrageous" and in its Order stated that the complete

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[21] Both the District Court and the Court of Appeals found that solicitation or receipt of outsider funds or services would not only result in disqualification of the candidate but would also subject him to fines, suspension or expulsion from union membership. 507 F.Supp. at 624, 645 F.2d at 1123.

ban on non-member contributions "too broadly trenches upon protected freedoms of expression and association and therefore, would violate the guarantees contained in the First Amendment if state action were present here. . . ." 507 F.Supp. at 626.

The Court of Appeals agreed that the rule violated § 101(a)(4) [22] and upheld invalidation of the rule in its entirety, but did so because it found that the rule, in addition to violating the right to sue, also violated rights of expression and association protected by § 101(a)(2). Thus, contrary to USWA's assertion, the Court of Appeals found it unnecessary to resolve the parties' dispute over whether the District Court was correct in invalidating the rule in its entirety based on the § 101(a)(4) violation. Similarly, because it invalidated the rule in its entirety on statutory grounds, the Court of Appeals found it unnecessary to determine whether the necessary "state

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[22] The Court of Appeals, in addition to stressing the inconsistency of the rule's clear language with the terms of § 101(a)(4) and the ambiguity of the CCAC opinion, felt "even greater concern" based on a provision in USWA's Elections Manual promulgated subsequent to the CCAC opinion (J.A. 492). The Manual though stating that the rule does not prohibit a candidate's use of outsider support to pay legal fees in assuring compliance with applicable election laws or in securing, defending, or clarifying legal rights of candidates, proceeded to state: "Activities which are designed to extract political gain from legal proceedings are subject to the support limitations of Section 27" (J.A. 495). The Court of Appeals stated its objection to such a rule in no uncertain terms:

> "This broad limitation on the right to sue subsumes whatever limit resulted from the Administrative Committee's hedging on the question whether a lawsuit 'motivated solely by a desire to promote a candidate's political campaign,' which is 'not a *bona fide* attempt to secure an adjudication of legal rights,' would be subject to the contribution restrictions. Under the regulation a candidate could not receive outside assistance to finance a lawsuit even if brought in good faith and not motivated solely by a desire to advance his campaign if it was designed to extract political gain. One would go a far distance to find *any* lawsuit brought during the heat of a campaign that was not designed to extract political gain." 645 F.2d at 1119.

action" was present, and therefore, whether the outsider rule violated the First Amendment, 645 F.2d at 1126, n. 22.

SUMMARY OF ARGUMENT

In striking down the USWA's outsider rule as inconsistent with the free speech section of the Bill of Rights title of LMRDA, the Court of Appeals correctly determined that the absolute ban on outsider contributions violated member-candidates' rights effectively to express their views in union elections. Recognizing that the right of free speech has, as this Court has repeatedly held, "its fullest and most urgent application" in the context of political campaigns, *Monitor Patriot Co.* v. *Roy*, 401 U.S. 265, 272 (1971), the Court of Appeals adhered to a long line of decisions which have consistently construed § 101(a)(2)'s guarantee of free speech as parallel to the First Amendment. As we show in Part I, the plain language of the statute guaranteeing the rights of union members to "express any views, arguments or opinions" is, like the First Amendment, without limitation as to subject matter. The legislative history of the free speech provision unmistakably confirms the intent of Congress to extend the right of free speech to all aspects of union affairs, certainly not excluding union election campaigns.

Given USWA's concession that Congress intended in § 101(a)(2) to "restate the core value of the First Amendment" (USWA Brief, p. 37), the remaining issue —whether an absolute ban on solicitation or acceptance of non-member assistance violates the rights of speech and association—is readily resolved by reference to this Court's prior decisions defining the "core" of First Amendment rights. This court has long recognized that "[e]ffective advocacy . . . is undeniably enhanced by group association." *NAACP* v. *Alabama, ex. rel, Patterson*, 357 U.S. 449, 460 (1958), and "that by collective effort individuals can make their views known, when, individually, their voices would be faint or lost." *Citizens Against Rent Control* v. *City of Berkeley*, —— U.S.

——, 102 S.Ct. 434, 436 (1981). Moreover, broad restrictions on the solicitation of contributions have been specifically found to abridge the right of free speech: "[W]ithout solicitation the flow of such information and advocacy would likely cease," *Village of Schaumburg* v. *Citizens for a Better Environment*, 444 U.S. 620, 632 (1980). And in *Buckley* v. *Valeo*, 424 U.S. 1, 65-66 (1976), this court found that freedom of expression and association is "diluted if it does not include the right to pool money through contributions, for funds are often essential if 'advocacy' is to be truly or optimally effective."

Because cases interpreting § 101(a)(2) over the past twenty years have uniformly held that speech by union members is protected even where the communication is with non-members, USWA is compelled to argue that the guarantee of free speech in Title I of LMRDA cannot apply to union election campaign contribution restrictions which, it contends, are governed by Title IV of the statute. This argument finds no support in the statute or its legislative history; to the contrary, Congress' inclusion of the Bill of Rights provisions—including the free speech guarantee—came by way of an amendment designed to fill a gap in the bill which already contained Title IV. In addition, USWA's argument flies in the face of this Court's recognition in *Hall* v. *Cole*, 412 U.S. 1, 14 (1973) that Title I was "specifically designed" to uphold the "member's right to seek higher office. . . ." Moreover, union election campaigns are more than simply a mechanism by which the union's officers are periodically selected. The campaign is the prime occasion for debate on the union's policies; it provides the only real opportunity for the membership to hear opposing views on issues ranging from strike policies to dues increases (J.A. 392-96). Election campaigns also provide the opportunity for the exposure of union corruption. To restrict the right of candidates effectively to communicate their views, opinions and political platforms during the crucial campaign period, thus, not only de-

prives challengers of the opportunity to be elected but also forecloses membership access to the only real internal union political dialogue which ever occurs.

We show in Part II that both lower courts properly found USWA's sweeping prohibition on non-member assistance to violate the right-to-sue provision of LMRDA § 101(a)(4) by restricting legal representation of member-candidates by non-member counsel and by prohibiting use of non-member contributions for litigation purposes. USWA's argument that the rule should have been invalidated only as it restricted non-member assistance for litigation would have required that the rule be judicially rewritten and was properly rejected.

Finally, we show that USWA's outsider rule violates the First Amendment. The Court of Appeals found it unnecessary to determine whether "state action" was present, because it found that the rule was invalid on statutory grounds. In the event that this Court does not sustain invalidation of the rule on statutory grounds, we show in Part III that the requisite state action is present and, accordingly, that USWA's rule violates the First Amendment.

ARGUMENT

I. THE COURT OF APPEALS CORRECTLY HELD THAT USWA'S TOTAL BAN ON MEMBER-CANDIDATES' SOLICITATION OF FINANCIAL AND OTHER SUPPORT FROM NON-MEMBERS VIOLATED § 101(a)(2) OF LMRDA.

In holding USWA's absolute ban on non-member support inconsistent with § 101(a)(2)'s guarantees of freedom of speech and association, and therefore, of no force or effect under § 101(b), the Court of Appeals properly looked to "the objectives Congress sought to achieve . . ." in enacting LMRDA and eschewed, as this Court has directed, "placing great emphasis upon close construction of the words." *Wirtz* v. *Local 153, Glass Bottle Blowers Ass'n*, 389 U.S. 463, 468 and n. 6 (1968); *Hall* v. *Cole*, 412 U.S. 1, 11 and n. 17 (1973); Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58

Mich. L. Rev. 819, 852 (1960). The Court of Appeals correctly found that a principal purpose of LMRDA was "to insure union democracy", 645 F.2d at 1121; S.Rep. No. 187, 86th Cong., 1st Sess. 2 (1959); H.R. Rep. No. 741, 86th Cong., 1st Sess. 2 (1959). In holding the rule's absolute prohibition of solicitation and receipt of non-member support to be irreconcilable with § 101(a)(2)'s broad free speech protection, the Court of Appeals' decision is wholly consistent with the language and objectives of Congress, the legislative history of the Bill of Rights title of LMRDA and the decisions of this Court and courts of appeals which have, over two full decades, consistently interpreted the free speech guarantee broadly and parallel to the First Amendment.

A. Section 101(a)(2) Provides Broad Protection to Union Members' Freedom of Speech in Furtherance of Congress' Overriding Aim to Promote Union Democracy.

Section 101(a)(2) serves Congress' overriding purpose to promote union democracy by providing broad protection to union members' freedom of speech and especially by specifically guaranteeing the right to "express any views, arguments or opinions. . . ." The legislative history clearly indicates that this statutory protection of free speech was modelled by Congress on that of the First Amendment. Section 101(a)(2), and LMRDA Title I of which it is a part, originated in an amendment to Senate Bill S. 1555 offered by Senator McClellan in the course of debate. Senator McClellan stated that his amendment "would bring to the conduct of union affairs and to union members *the reality of some of the freedoms from oppression that we enjoy as citizens by virtue of the Constitution of the United States. . . .*" 105 Cong. Rec. 6472 (1959) (Emphasis added). He stated further:

> "The rights which I desire to have spelled out in the bill are not now defined in the bill. Such rights are basic. *They ought to be basic to every person, and they are, under the Constitution of the United*

States." 105 Cong. Rec. 6472, 6478 (1959) (Emphasis added).[23]

The legislation was taken up in the House of Representatives after passage of S. 1555 by the Senate. The Landrum-Griffin bill, H.R. 8400, substituted by the House of Representatives for the bill which had been reported out of Committee, H.R. 8342, contained a free speech provision identical to that in the Senate bill. Representative Landrum, the principal sponsor of the bill in the House, stated as follows:

> "Now, there has been a lot of talk about the bill of rights for union members. That is good. *But, no American living today, whether he is a member of a union or not, is without the rights contained in this so-called bill of rights, because they are substantially contained in the Bill of Rights of the Federal Constitution. The only argument is that we may be applying them in a field that is completely new.*" 105 Cong. Rec. 15711 (1959) (Emphasis added).

Contrary to USWA's contention (Brief, p. 35), the "lesson" to be derived from the legislative history is that Congress meant § 101(a)(2) to confer the broadest protection of free speech fully equivalent to that of the First Amendment. Indeed, USWA concedes that § 101(a)(2) was intended to "restate the core value of the First Amendment" (Brief, p. 37). While it proceeds to disclaim that the "entire corpus" of the Amendment was incorporated, USWA fails to specify the portions which were purportedly not included. Political discussion in connec-

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[23] After adoption by the Senate of Senator McClellan's amendment, a substitute amendment was offered by Senator Kuchel and several other Senators, and adopted, 105 Cong. Rec. 6492-93, 6727 (1959). The substitute amendment contained a proposed proviso which formed the basis for the proviso ultimately enacted in § 101(a)(2). Senator Javits, one of the proponents of the substitute, explained the intent of the proviso as paralleling limitations upon exercise of First Amendment rights recognized in decisions of this Court, 105 Cong. Rec. 6726 (1959).

tion with elections has been recognized as "an area of the *most fundamental* First Amendment activities", *Buckley* v. *Valeo*, 424 U.S. 1, 14 (1976) (Emphasis added). It is inconceivable that in incorporating the First Amendment Congress meant to exclude "the most fundamental First Amendment activities." And, as stated, this Court in *Hall* has declared Title I "*specifically designed*" to protect "the union member's right to seek higher office. . . ." (Emphasis added) 412 U.S. at 14. Section 101(a)(2) does not say that union members are guaranteed the right of free speech in all instances *except during union elections*, as USWA argues. Nor is it silent. To the contrary, Congress expressly guaranteed in § 101(a)(2) the right of union members "to express any views, arguments or opinions" on whatever subject without limitation.

Following the plain language of § 101(a)(2) and the clear legislative history, this Court and the courts of appeals have in the twenty-two years since enactment of LMRDA, interpreted § 101(a)(2) as providing broad protection of freedom of speech parallel to that embodied in the First Amendment, *Hall* v. *Cole*, 412 U.S. 1 (1973); *Salzhandler* v. *Caputo*, 316 F.2d 445, 450-51 (C.A. 2, 1963), *cert. denied*, 375 U.S. 946; *Fulton Lodge No. 2* v. *Nix*, 415 F.2d 212, 217 (C.A. 5, 1969) (under LMRDA, freedom of speech "enjoy[s] a particularly favored position"); *Grand Lodge of Int'l Ass'n of Machinists* v. *King*, 335 F.2d 340 (C.A. 9, 1964), *cert. denied*, 379 U.S. 920 (1964); *Johnson* v. *Nelson*, 325 F.2d 646, 653 (C.A. 8, 1963); *Maceira* v. *Pagan*, 649 F.2d 8, 18 (C.A. 1, 1981) (". . . LMRDA's bill of rights . . . is aimed at protecting in the union context freedoms analogous to those that the First Amendment safeguards from governmental interference"); *Mallick* v. *International Broth. of Elec. Workers*, 644 F.2d 228, 236 (C.A. 3, 1981) ("The need to avoid chilling free speech rights is just as compelling in the context of the Landrum-Griffin Act");

Lodge 1380, Brotherhood of Ry., Etc. v. *Dennis*, 625 F.2d 819, 827 (C.A. 9, 1980).[24]

The Courts have not only disapproved retaliation for and other discipline of protected speech,[25] *Salzhandler, supra*; *King, supra*; *Fulton Lodge, supra*; *Maceira, supra*, but as in this case have invalidated provisions of union constitutions inconsistent with the statutory free speech guarantee, *Mallick, supra*; *Semancik* v. *United Mine Workers of America, District 5*, 466 F.2d 144 (C.A. 3, 1972). The "free speech of union dissenters" has been held protected not only from reprisals "but from any inhibiting influence." *Local 1380, supra*, 625 F.2d at 827. As broadly stated in *Johnson* v. *Nelson, supra*:

> "No *alleged* policy determination, no directive by any official will be allowed to impair freedom of speech within the union." 325 F.2d at 653.

The Court of Appeals' holding here is supported by numerous decisions recognizing that LMRDA's free speech protection is not confined to the exercise of that right among union members but extends to speech and association outside the union as well, 645 F.2d at 1121. Quoting Senator McClellan, the Court of Appeals endorsed the right of union members:

> " 'To assemble in groups, if they like, and to *visit their neighbors* and to discuss union affairs, and to say what they think, or perhaps discuss what should be done to straighten out union affairs, or perhaps

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[24] In *Salzhandler* v. *Caputo, supra*, a seminal decision universally accepted by the lower federal courts and favorably cited in *Hall* v. *Cole, supra*, 412 U.S. at 8, the Second Circuit interpreted § 101(a)(2)'s free speech protection as extending even more broadly than the First Amendment by barring union disciplinary proceedings for defamatory statements which would be actionable in a court of law.

[25] As noted above, USWA's rule contemplates not only disqualification of candidates for violation of its prohibitions but also discipline in the form of fines, suspension and/or expulsion from membership, p. 18, n.21, *supra*.

discuss the promotion of a union movement, or perhaps a policy in which they believe. . . . .' 105 Cong. Rec. 6477 (1959) (remarks of Sen. McClellan) (Emphasis added)." 645 F.2d at 1121.

Section 101(a)(2)'s free speech protection has since the very earliest days of LMRDA been held to extend to union member communications addressed to persons outside the union and to the public at large, *Graham* v. *Soloner*, 220 F.Supp. 711, 714 (E.D. Pa. 1963) (rejects contention that § 101(a)(2)'s protection extends to expression "only as among union members themselves, and gives no protection from discipline for public expression").[26] In *Ostrowski* v. *Local 1-2, Utility Workers of America*, 104 LRRM 2343 (S.D.N.Y. 1980), it was held that § 101(a)(2) protects not only communications addressed by union members to persons outside the union's membership but association between union members and non-members, as well. *Ostrowski* involved expression and association between members and non-members for advocacy of greater caution against nuclear hazards. The present case likewise involves expression and association between members and non-members in the form of members' solicitation and receipt of campaign support from non-members.

This Court in its sole prior application of § 101(a)(2), *Hall* v. *Cole, supra*, declared Title I "*specifically designed*" to uphold the "member's right to seek higher office." 412 U.S. at 14 (Emphasis added). *Hall's* rationale provides strong support for disapproval of USWA's outsider rule. The Court in *Hall* declared awardability of counsel fees to successful Title I plaintiffs to be "consonant with Congress' express desire to adopt legislation that 'will afford

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[26] Accord: *Fulton Lodge No. 2* v. *Nix*, 425 F.2d 212, 219 (C.A. 5, 1969) (rejects argument that member's statements were "extraunion" and consequently unprotected); *Yablonski* v. *United Mine Workers of America*, 71 LRRM 3041 (D.D.C. 1969) (member's "public announcement" of candidacy held protected); *Mallick, supra*, 644 F.2d at 236 ("clearly protected activity" included "talking to newsmen and communicating with the NLRB, Congressmen and Labor Department officials . . .").

necessary protection of the rights and interests of employees and the public generally . . .' 29 U.S.C. 401(b)". The Court declared there—and the same is true here—that a contrary rule would frustrate Congress' objective by leaving members without means essential for assertion and exercise of protected rights. The Court so held despite the absence of express provision for fee awards in Title I and the lack of any clear indication in the legislative history that Congress contemplated that such awards would be available. In *Hall*, there was much less statutory language to rely on and much less legislative history than here, where Congress' aim to incorporate First Amendment protection is so clear. Quoting from the Court of Appeals' decision in *Hall*,[27] this Court stated:

> "'Not to award counsel fees in cases such as this would be tantamount to repealing the Act itself by frustrating its basic purpose. It is difficult for individual members of labor unions to stand up and fight those who are in charge. The latter have the treasury of the union at their command and the paid union counsel at their beck and call while the member is on his own. . . . An individual union member could not carry such a heavy financial burden. Without counsel fees the grant of federal jurisdiction is but a gesture for few union members could avail themselves of it.'" 412 U.S. at 13, quoting 462 F.2d at 780-781.

This Court accordingly found it "simply 'untenable to assert that in establishing the Bill of Rights under the Act Congress intended to have those rights diminished by the unescapable fact that an aggrieved union member would be unable to finance litigation . . . .'" 412 U.S. at 13-14, quoting *Gartner* v. *Soloner*, 384 F.2d 348, 355 (C.A. 3, 1967).

The Court of Appeals in this case properly recognized that the upholding of USWA's solicitation ban would

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[27] *Cole* v. *Hall*, 462 F.2d 777 (C.A. 2, 1972).

equally frustrate Congress' purpose and that protecting the right to solicit funds necessary to make speech effective is part and parcel of the protection of free speech and thus of union democracy. Just as "untenable" as the construction rejected by this Court in *Hall* is the argument that a provision designed broadly to protect free speech should be construed to allow prohibitions of fund solicitation essential to effective advocacy. Echoing *Hall*, the Court of Appeals in the instant case reasoned that "[e]ven without contribution limitations, challengers to the union leadership face substantial barriers, especially the electoral power of the union staff." 645 F.2d at 1121. The Court of Appeals concluded:

> "We cannot conceive of anything that would do more to inhibit union democracy than to prohibit insurgent candidates from receiving financial support from those outside sources that are not prohibited by the statute." 645 F.2d at 1123.

While *Hall* arose from union imposition of discipline for a member's criticism of union officers outside the context of a union election campaign, its rationale applies with greater force in the campaign context. LMRDA's free speech protection, like that of the First Amendment, is most critical in the context of election campaigns.[28] This Court has declared that Congress' model of democratic elections was "political elections in this country", *Wirtz* v. *Hotel, Motel & Club Employees U., Local 6*, 391 U.S. 492, 504 (1968); *Local 3489, United Steelworkers, Etc.* v. *Usery, supra*, 429 U.S. at 309 (1977). Only recently, the Court of Appeals for the Seventh Circuit in *Marshall* v.

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[28] In *Buckley* v. *Valeo, supra*, 424 U.S. at 14, this Court began by declaring that the campaign financing limitations which it was considering "operate in an area of the *most fundamental* First Amendment activities." (Emphasis added.) As observed in *Monitor Patriot Co.* v. *Roy*, 401 U.S. 265, 272 (1971): "it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office."

Local 1010, United Steelworkers of America, 664 F.2d 144, 150 (C.A. 7, 1981), stated as follows:

> "One objective Congress sought to achieve with the LMRDA was to 'prevent, discourage, and make unprofitable' improper conduct by union officials. Senate Report No. 187, Apr. 14, 1959 [To accompany S. 1555], reprinted in 1959 U.S. Code Cong. and Admin. News at 2321. Through Title IV Congress sought to achieve 'free and democratic' union elections. *Id.* at 2336. *Congress was also interested in* curbing abuse by 'entrenched' union leadership, *Hotel, Motel & Club Employees Union, supra* at 499, and *encouraging challenges to such leadership*, see *Local 3489 United Steelworkers of America* v. *Usery*, 429 U.S. 305, 311 (1977)." (Emphasis supplied.)

This Court has recognized repeatedly Congress' aim through LMRDA to assure a fair opportunity for rank-and-file challenges. Its decisions have disapproved union rules which unreasonably limit the right to challenge, *Local 6, supra* (disapproved union rule conditioning eligibility on prior office holding), *Local 3489, supra* (disapproved union rule conditioning eligibility on satisfaction of unreasonable meeting attendance requirement) and have also rejected interpretations of the Act which would frustrate Congress' purpose even indirectly, *Local 153, supra* (rejected contention that suit for supervised rerun is mooted by conduct of regular election). In *Local 6*, the Court found Congress' aim to foster rank-and-file challenges indicated by Title I as well as Title IV, 391 U.S. at 497-98, and stated that "[c]ontrol by incumbents through devices which operate in the manner of this by-law is precisely what Congress legislated against", 391 U.S. at 505.

In a union election campaign, as in any other, the candidate's right to speak would have little meaning without the right to solicit funds needed effectively to communicate. (Summers Affidavit, J.A. 160-163). The Court of Appeals correctly held that USWA's absolute ban on solicitation of contributions from non-member

sources "would leave union members practically at the mercy of every entrenched group of incumbents." 645 F.2d at 1125. Its conclusion is fully in harmony with Congress' aim to model union elections on political elections in this country where free speech plays its most vital role and has been afforded its broadest protection.

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USWA's arguments in support of a narrow construction of § 101(a)(2) are without substance:

(i) USWA's contention (Brief, p. 37) that § 101(a)(2) incorporates First Amendment protection only selectively has no support in any prior decision and, as applied to this case, presupposes that Congress failed to protect free speech activities otherwise recognized as the "most fundamental".

(ii) USWA's contention (Brief, pp. 37-39) that § 101(a)(2) incorporates First Amendment doctrine only as it existed at the time of enactment is also without support in the legislative history and is belied by remarks of Senator Javits, a sponsor of the Bill of Rights substitute, to the effect that courts would in the future determine permissible limitations upon free speech under § 101(a)(2) just as under the First Amendment, 105 Cong. Rec. 6726 (1959). Senator Javits stated:

> "The Court determines what is reasonable every day. The court will do so in this instance. We have *lodged the power* where it belongs." *Ibid.* (Emphasis supplied).

(iii) USWA's argument (Brief, p. 36) that § 101(a)(2) does not specifically mention campaign financing represents the very sort of literalism warned against in *Local 153* and *Hall* and would apply equally to the First Amendment which, though similarly silent, has many times been held to protect solicitation and receipt of support in furtherance of effective advocacy.

(iv) USWA attempts (Brief, pp. 29-32, 42) to equate Congress' objective in Title IV of making unions responsive to their members with the objective of the outsider

rule. Congress, however, was concerned specifically with ridding unions of the influence of gangsters and hoodlums and also, of course, with prohibiting contributions by employers. Neither the legislative history of Title IV nor that of Title I suggests support for an absolute ban on solicitation or receipt of contributions from the general public. Only by the crudest of syllogisms can USWA seek to equate Congress' concern with excluding criminal and employer elements with USWA's absolute ban of solicitation or receipt of support from members of the public at large.

(v) Finally, to read Title I's speech guarantee as limited by Title IV, as USWA urges (Brief, pp. 35-36), is inverted. Title IV passed the Senate in 1958 and was re-inserted in the Bill in 1959; Title I was added *later* to fill a gap in the legislation as it then existed, much the same as the First Amendment and the balance of the Bill of Rights were added to the U.S. Constitution. Accordingly, USWA's lengthy discussion of the legislative history of Title IV is wide of the mark altogether. It would be wholly contrary to the intent of Congress to limit the guarantee of free speech by looking to the very provisions of the Act which Congress found inadequate so as to require adoption of the amendment which became Title I.

B. Invalidation of USWA's Outsider Rule is Required by § 101(a)(2) and Serves Congress' Aim that Unions be Responsive to Their Members.

In decisions applying the First Amendment, this Court has many times recognized solicitation of financial support and association in furtherance of effective advocacy as essential to, and fully encompassed within, the First Amendment's protection of free speech. The Court of Appeals' invalidation of USWA's rule represents a routine application of this fundamental free speech principle.

Only recently in *Citizens Against Rent Control* v. *City of Berkeley*, 102 S.Ct. 434, 436 (1981), the Court declared as follows:

> "We begin by recalling that the practice of persons sharing common views banding together to achieve a common end is deeply embedded in the American political process. The 18th Century Committees of Correspondence and the pamphleteers were early examples of this phenomena and the Federalist Papers were perhaps the most significant and lasting example. The tradition of volunteer committees for collective action has manifested itself in myriad community and public activities; in the political process it can focus on a candidate or on a ballot measure. *Its value is that by collective effort individuals can make their views known, when, individually, their voices would be faint or lost.*" (Emphasis added).

This Court has accorded protection to speech involving solicitation of financial support in connection with public election campaigns and referenda, *Buckley* v. *Valeo*, *supra*; *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765 (1978); *Citizens Against Rent Control*, *supra*, and in diverse other contexts as well. It has extended protection to door-to-door and on-street solicitation of contributions to charitable organizations, *Village of Schaumburg* v. *Citizens for a Better Environment*, 444 U.S. 620 (1980); advertising of prescription drugs, *Virginia State Bd. of Pharm.* v. *Virginia Citizens Consumer Council*, 425 U.S. 748 (1976); and advertising of legal services, *Bates* v. *State Bar of Arizona*, 433 U.S. 350 (1977). It has held protected even "speech which does 'no more than propose a commercial transaction,'", *Virginia State Bd. of Pharm.*, *supra*, 425 U.S. at 762. In *Bates*, the Court stated:

> ". . . [O]ur cases long have protected speech even though it is in the form of a paid advertisement . . . , in a form that is sold for profit . . . , *or in the form of a solicitation to pay or contribute money* . . . ." 433 U.S. at 363. (Emphasis supplied.)

In *Village of Schaumburg*, where the Court disapproved a village ordinance prohibiting door-to-door and on-street solicitation of contributions by certain charitable organizations, it stressed the connection between solicitation of necessary financial support and effective advocacy:

> "Soliciting financial support is undoubtedly subject to reasonable regulation but the latter must be undertaken with due regard for the reality that solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or particular views on economic, political or social issues, and for the reality that *without solicitation the flow of such information and advocacy would likely cease.*" 444 U.S. at 632 (Emphasis added).[29]

Solicitation and receipt from others of financial support necessary for effective advocacy constitutes association which this Court has protected as an inseparable aspect of freedom of speech under the First Amendment, *NAACP* v. *Alabama, ex rel. Patterson,* 357 U.S. 449, 460 (1958):

> "Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly."

As the Court stated in *Griswold* v. *Connecticut,* 381 U.S. 479, 483 (1965):

> "The right of 'association' . . . is more than the right to attend a meeting; it includes the right to express one's attitudes or philosophies by membership in a group or by affiliation with it or by other lawful means. Association in that context is a form of expression of opinion; and while it is not expressly included in the First Amendment *its existence is necessary in making the express guarantees fully meaningful.*" (Emphasis added.)

In the electoral context, this Court has stated, "The First Amendment protects political association as well as

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[29] Accord: *Schneider* v. *State of New Jersey (Town of Irvington),* 308 U.S. 147 (1939); *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940); *Jamison* v. *Texas,* 318 U.S. 413 (1943); *Murdock* v. *Pennsylvania,* 319 U.S. 105 (1943); *Hynes* v. *Mayor of Oradell,* 425 U.S. 610 (1976).

political expression." *Buckley, supra*, 424 U.S. at 15. The Court of Appeals' reliance on *Buckley* is responsive to this Court's observation that Congress' model for union elections was political elections in this country and is also supported by legislative history and decisions equating the protection conferred by LMRDA with that provided by the U.S. Constitution. As observed by the Court of Appeals, this Court in *Buckley* recognized the significant connection between money and political speech:

> "A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached." 645 F.2d at 1122, quoting 424 U.S. at 19.

Similarly, with respect to contributions, the Court of Appeals found *Buckley* instructive as follows:

> "Given the important role of contributions in financing political campaigns, contribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for 'effective advocacy'." 645 F.2d at 1122, quoting 424 U.S. at 21.

This is particularly so in the case of USWA whose 1.3 million member electorate is spread geographically throughout the United States and Canada. As underscored in *Buckley*, freedom of expression and association "is diluted if it does not include the right to pool money through contributions, for funds are often essential if 'advocacy' is to be truly or optimally 'effective'." 424 U.S. at 65-66; *Citizens Against Rent Control*, 102 S.Ct. at 437.

Contrary to USWA's arguments, it is the invalidation of the rule which serves Congress' aim that unions be responsive to their members. Invalidation of the rule preserves the opportunity to member-candidates—particularly challengers to advantaged incumbents—to solicit

funds essential to communicate their positions to the membership-electorate. As observed in *Buckley*, *supra*:

> ". . . [I]t is of particular importance that candidates have the unfettered opportunity to make their views known so that the electorate may intelligently evaluate the candidates' personal qualities and their positions on vital public issues before choosing among them on election day." *Buckley*, *supra*, 424 U.S. at 52-53.

It is the rule's invalidation—not the rule—which enhances the members' "ability . . . to make informed choices among candidates. . . ." *Buckley*, *supra*, 424 U.S. at 14.

Moreover, USWA's outsider rule is the classic case of overbreadth. *Shelton* v. *Tucker*, 364 U.S. 479, 490 (1960). The rule's absolute and sweeping ban on solicitation of non-member financial support stands in stark contrast to the $1,000 limitation upheld in *Buckley* as a "single narrow exception to the rule that limits on political activity [are] contrary to the First Amendment." *Citizens Against Rent Control*, 102 S.Ct. at 437. Any legitimate concern with avoiding contributions from possibly corrupting sources—to the extent not already prohibited by 401(g)'s ban on *employer contributions*—could be served by a carefully crafted and fairly applied requirement of disclosure. Any concern about the size of contributions as possibly corrupting could be served by contribution ceilings as upheld in *Buckley*. USWA's outsider rule, as stated above, leaves wholly unchecked the solicitation of contributions in whatever amount from union staff, which has been not only the traditional source of campaign support for incumbent candidates but a source which has proven in and of itself virtually sufficient to meet the incumbents' campaign needs. This being so, the Court of Appeals properly concluded that USWA's outsider rule "in many instances could unquestionably operate to prevent candidates, at least those facing the electoral power of entrenched union staffs,

from 'amassing the resources necessary for effective advocacy' ". 645 F.2d at 1122.

The Court of Appeals' holding that USWA's absolute ban on solicitation of campaign support from extraunion sources conflicts with § 101(a)(2) is fully in harmony with Congress' objective to accord the broadest protection to union members' freedom of speech and with decisions interpreting § 101(a)(2) in furtherance of that objective. As a statute designed to protect free speech, § 101(a)(2) cannot tolerate union-imposed prohibitions on solicitation essential to effective advocacy in the crucial election context.

C. The Court of Appeals' Invalidation under § 101 (a)(2) of USWA's Ban on Solicitation and Receipt of Non-Member Campaign Contributions does not Implicate USWA's Freedom of Association under the First Amendment.

The Court of Appeals (645 F.2d at 1125, n. 19) correctly recognized that USWA's reliance upon *Democratic Party* v. *LaFollette*, 450 U.S. 107 (1981), was plainly misplaced in this case:

> "The Union also contends that the recent decision of the Supreme Court in *Democratic Party* v. *LaFollette*, 49 U.S.L.W. 4178 (Feb. 25, 1981), supports the validity of Section 27. We disagree. That decision upheld a rule of the Democratic Party that only voters who publicly recorded their preference for the Democratic Party could vote in the selection process for delegates to the national convention, against a Wisconsin law that permitted *any* voter to vote in a state election which purported to bind delegates to the Democratic National Convention in their votes on presidential candidates. *The decision in Democratic Party is inapposite here. It frees elected delegates from being required at the National Convention to vote the preference for president expressed in an election which was not limited to publicly recorded Democrats, but in no way restricts any candidate for delegate from receiving financial support*

from independents and even from members of other parties." (Emphasis added).

USWA's dispute with the Court of Appeals' treatment of *Democratic Party* rests on a transparent play on words which would lump suffrage together with expression under the rubric of "participation". Thus, while USWA characterizes its rule as an attempt by USWA and its members to limit "control" over their decisions to USWA members, the campaign financing which USWA wants to prohibit is in reality fully-protected expression and association, *Buckley, supra; Citizens Against Rent Control, supra,* which does not in any way "control" USWA members in their choice of officers.

This basic distinction was crystallized in *Buckley*:

> ". . . [T]he principles that underlie invalidation of governmentally imposed restrictions on the franchise do not justify governmentally imposed restrictions on *political expression. Democracy depends on a well-informed electorate, not a citizenry legislatively limited in its ability to discuss and debate candidates and issues.*" 424 U.S. at 49, n. 55 (Emphasis added).

Nothing in *LaFollette* supports USWA's attempt to "legislatively limit" the candidates' ability to engage in effective discussion and debate.

Democratic Party itself made clear that the Party's freedom of association would in no way have been violated by a *non-binding* primary in which non-Democrats, though allowed to express a presidential preference, could not share in determining the Party's candidate selection. *A fortiori,* USWA's freedom of association is not violated by merely upholding a candidate's right to solicit and receive non-member campaign contributions, for regardless of receipt of such contributions, the determination of USWA's selection of officers rests exclusively with votes cast only by USWA members.

Moreover, USWA's reliance on *LaFollette* ignores the vital distinction between the Democratic Party which citizens may join or leave at will and a labor organiza-

tion which requires represented employees to pay dues as a condition of continuing employment while at the same time excluding from membership interested persons such as Plaintiff Sadlowski, Sr. Whatever the prerogatives of a genuinely voluntary association such as a political party to limit control over its decisions to its membership, a labor organization which both limits membership and coerces dues payments in the fashion of USWA has no right under *Democratic Party* to prevent contributions and other expressions of support for candidates from members of the general public.

D. If the Rule's Invalidation Under Title I is not Upheld, the Court Would be Required to Pass on the Fundamental Constitutional Questions Left Unresolved by the Court of Appeals.

There is hardly a better established rule than that federal courts must avoid deciding constitutional questions if the case may be resolved by statutory construction. *E.g., International Ass'n of Machinists* v. *Street*, 367 U.S. 740, 749-50 (1961); *Crowell* v. *Benson*, 285 U.S. 22, 62 (1932). It is the Court's "plain duty to adopt that construction which will save the statute from constitutional infirmity." *United States* v. *Delaware & Hudson Co.*, 213 U.S. 366, 407 (1909). Only recently, for example, this Court reprimanded the lower courts for focusing primarily on constitutional claims when statutory claims had also been raised:

> "We do not condone this departure from settled federal practice. 'If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable.'"

New York City Transit Authority v. *Beazer*, 440 U.S. 568, 582 (1979), citing *Spector Motor Service* v. *McLaughlin*, 323 U.S. 101, 105 (1944). This Court goes on to reaffirm that its policy is one "of *strict necessity in disposing of constitutional issues.*" *Id.* at n.22 (Emphasis supplied.)

Thus, the Court of Appeals in the instant case properly refrained from reaching the question of the validity of the "outsider" rule under the First Amendment and the attendant far-reaching constitutional questions whether the requisite state action exists, 645 F.2d at 1126, n.22.[30] And certainly that Court's interpretation of LMRDA (see pp. 22 to 37, *supra*) is far more conservative and compelling than various instances of this Court's interpretation of statutes to avoid constitutional decisions. For example, although neither the union shop provision of the Railway Labor Act, 45 U.S.C. § 152, Eleventh, nor its legislative history makes mention of compulsory financial support of union political activities, this Court held that the statute forbids expenditure for political purposes of an employee's dues or fees over his objection. *Street, supra*, 367 U.S. at 750-79.[31] No comparable difficulty in statutory construction to avoid constitutional adjudication is present here and Section 101(a)(2) should, for this additional reason, be interpreted to invalidate the "outsider" rule. We turn now to LMRDA's

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[30] Those questions, of course, would have to be reached in the event the Court of Appeals' invalidation of the outsider rule under Title I were not upheld by this Court. See Part III, pp. 44-50, *infra*.

[31] Other examples include *United States* v. *Delaware & Hudson Co.*, 213 U.S. 366 (1909) (statute forbidding the carriage in interstate commerce by a railroad company of "*any* article or commodity . . . manufactured, mined or produced by it, or under its authority" could not include articles or commodities from which the railroad had disassociated prior to transportation); *The Abby Dodge* v. *United States*, 223 U.S. 166 (1912) ("sponges taken from the waters of the Gulf of Mexico or Straits of Florida" means only sponges taken outside of state territorial limits); *United States* v. *CIO*, 335 U.S. 106 (1948) ("expenditure in connection with" certain elections could not include expenditures for "a trade journal, a house organ, or a newspaper, published [by a union or corporation] expressing views on candidates or political proposals in the regular course of business"); *United States* v. *Seeger*, 380 U.S. 163 (1965) (a "belief in a relation to a Supreme Being", though it does not include "essentially political, sociological, or philosophical views or a merely personal moral code" encompasses any sincere belief that "occupies a place in the life of its possessor parallel to that filled" by an orthodox belief in God).

right to sue guarantee which equally requires invalidation of the rule.

II. THE DISTRICT COURT PROPERLY INVALIDATED USWA'S OUTSIDER RULE IN ITS ENTIRETY BASED ON ITS VIOLATION OF THE LMRDA RIGHT TO SUE GUARANTEE.

Both the District Court and the Court of Appeals found USWA's rule in clear violation of the LMRDA right to sue guarantee, § 101(a)(4), 29 U.S.C. § 411 (a)(4).[32] Implicit in this Court's decision in *Hall* is that union members do not have the resources to vindicate violations of Title I. Barring the candidate from receiving anything of value from a non-member attorney other than the attorney's volunteered time *without the use of office staff and facilities* would preclude a candidate from receiving the very legal representation this Court in *Hall* sought to enhance. The rule would preclude representation of the precise sort received by Sadlowski from Mr. Rauh and his office in connection with the 1973 and 1977 elections. It would also preclude receipt of funds from any non-member to finance such litigation efforts. The Court of Appeals declared as follows:

> "The outsider rule in Section 27 on its face clearly violates the rights of union members protected by the right to sue guarantee of the LMRDA. The Union's attempts to construe the rule against its plain meaning have been unpersuasive." 645 F.2d at 1119.[33]

Finding the rule's invalidation in its entirety necessitated by the § 101(a)(2) violation, the Court of Ap-

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[32] Section 101(a)(4) appears at pp. 2a-3a in the Appendix to Petitioner's Brief.

[33] The District Court's conclusion, affirmed by the Court of Appeals, that the outsider rule was inconsistent with § 101(a)(4)'s right-to-sue guarantee was virtually assured in light of this Court's broad construction of that section of the Act in *NLRB* v. *Industrial Union of Marine & Shipbuilding Workers*, 391 U.S. 418, 424 (1968): "Any coercion used to discourage, retard or defeat that access [to the courts and administrative agencies] is beyond the legitimate interests of a labor organization."

peals found it unnecessary to determine what remedy would be appropriate for the rule's violation of § 101(a)(4).

The District Court concluded that the rule's violation of § 101(a)(4) required that it be invalidated in its entirety. In doing so, it correctly rejected requests first advanced by USWA through its Motion for Reconsideration that the Court, in effect, redraft the challenged rule by inserting an express prohibition of its application to lawsuits. USWA's request was predicated on *United States* v. *Jackson*, 390 U.S. 570, 585 (1968) (". . . the invalid part may be dropped if what is left is fully operative as a law") (USWA Memorandum in Support of Motion for Reconsideration). The District Court rightly determined, however, from the text of the rule itself, that the rule's application to litigation activity was not "functionally independent" from the remainder of the rule; that it would not be possible simply to strike out a word, phrase, sentence or paragraph so as to permit some portion of the rule to survive; and that invalidation of the rule in its entirety was required by authorities including *Jackson* on which USWA had relied. In line with "long established principles of federal law . . . [which] dictate against courts inserting limitations in order to rescue otherwise invalid statutes", *Roe* v. *Casey*, 623 F.2d 829, 837 (C.A. 3, 1980), citing *United States* v. *Reese*, 92 U.S. 214, 221 (1879), the District Court appropriately rejected USWA's request, 507 F.Supp. at 625-626.

In the Court of Appeals and here, USWA—unsurprisingly abandoning reliance on *United States* v. *Jackson*, *supra*—has argued that invalidation of the rule in its entirety was contrary to *Parker* v. *Levy*, 417 U.S. 733 (1974), and *Broadrick* v. *Oklahoma*, 413 U.S. 601, 613 (1973) (Reply Brief in Support of Petition, p. 8, n.5). Those cases, however, are not contrary to *United States* v. *Reese*, *supra*, and its progeny and in no way support USWA's request that the Court rewrite the outsider rule

by engrafting an exception permitting acceptance of legal services and non-member funds for litigation purposes. *Broadrick* and *Parker* state a rule of *standing* that "a person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in other situations not before the Court." *Broadrick*, *supra*, 413 U.S. at 610; *Parker*, *supra*, 417 U.S. at 752-760. That rule of standing has not been applied generally in cases such as this involving infringements upon free expression, *Parker*, *supra*, 417 U.S. at 759; *Dombrowski* v. *Pfister*, 380 U.S. 479, 486 (1965); but, in any event, it is plainly inapplicable here inasmuch as no question could be raised regarding the standing of Plaintiffs Sadlowski and Samargia to complain of the rule's infringement upon litigation activity. Finally, limitations on *standing* to attack overly broad statutes and rules simply have no bearing on the question here of devising the proper *remedy* where standing is not at issue and where the restriction has been found improper. That question was correctly resolved by the District Court based on *United States* v. *Jackson*, *supra*, on which USWA itself previously relied, and on the doctrine of *United States* v. *Reese* which disapproves judicial rewriting of invalid enactments.[34]

The remedy directed by the District Court based on its finding of a § 101(a)(4) violation was correct even apart from the § 101(a)(2) violation recognized by the Court of Appeals as an alternative basis for invalidation of the rule in its entirety.

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[34] USWA's observation that LMRDA was meant to "work the minimum necessary intrusion upon union self government" (Reply Brief in Support of Petition, p. 8, n.5), rather than supporting its insistence that the District Court should have rewritten the rule, in fact militates against judicial repair through rewriting. Rewriting of the challenged provision by the Court would involve far greater, not less, intrusion into the Union's processes than the course properly followed by the District Court.

III. INVALIDATION OF THE RULE WOULD, IF THERE WERE NO TITLE I VIOLATIONS, BE REQUIRED UNDER THE FIRST AMENDMENT.

A. USWA's Rule Too Broadly Trenches Upon Freedoms of Expression and Association Protected by the First Amendment.

The District Court expressly found that USWA's rule too broadly trenches upon freedoms of expression and association and declared that it would violate the First Amendment were state action present. The Court of Appeals, by looking to the First Amendment in order to construe § 101(a)(2), quite plainly agreed that the outsider rule does indeed implicate rights guaranteed by the First Amendment. The Court of Appeals, however, found it unnecessary to determine—as the District Court had held—whether a finding of state action was foreclosed by a single sentence in this Court's decision in *United Steelworkers of America* v. *Weber*, 443 U.S. 193 (1979).

Affirmance of the order invalidating the Steelworkers' outsider rule on First Amendment grounds follows necessarily if invalidation of the rule on statutory grounds is not sustained. The Court of Appeals' invalidation of the rule under § 101(a)(2) focused upon the rule's infringement upon expression and association by member-candidates such as Plaintiffs Sadlowski, Jr. and Samargia since it is solely the rights of union members which Title I protects, 645 F.2d at 1116, n. 3. The speech and association interests of members would presumably be the same under the First Amendment as under § 101(a)(2). In contrast, the free speech and association interests of non-member plaintiffs Sadlowski, Sr., Rubenstein and Miller are cognizable only under the First Amendment.

It would be far too late in the day for USWA to contend that it and similar labor organizations are purely private associations whose affairs are of no public concern. More than thirty years ago, before labor organizations achieved the size and public impact they have today, it was recognized that unions were not private, purely voluntary enclaves:

> "To contend that no 'outsiders' should be permitted to interfere with the internal affairs of unionism is to dodge the reality of what unionism means today. The unions cannot claim public protection under the Wagner Act, and similar legislation, and in the same breath deny that the public has legitimate concern with the way they are run. Unions are no longer strictly private, voluntary associations which a worker may or may not join. They have become semipublic, sometimes compulsory bodies. Their operation in the civil and economic spheres is unequivocally 'affected with a public interest,' quite as much as the sale of stocks and bonds now regulated by the Securities and Exchange Commission." *Labor Committee, Twentieth Century Fund*: Report and Recommendations: *Trends in Collective Bargaining* p. 247 (1945).

The views expressed in the Twentieth Century Fund's 1945 Report are supported by the decisions of this Court. In *Thomas* v. *Collins*, 323 U.S. 516 (1945), this Court upheld the right of a union official to communicate the union's message to non-members free of prior restraint, declaring as follows:

> "Great secular causes, with small ones, are guarded. The grievances for redress of which the right of petition was insured, and with it the right of assembly, are not solely religious or political ones. And the rights of free speech and a free press are not confined to any field of human interest." 323 U.S. at 531.

And in *Thornhill* v. *Alabama*, 310 U.S. 88 (1940), the Court stated:

> "The merest glance at State and Federal legislation on the subject demonstrates the force of the argument that labor relations are not matters of mere local or private concern. Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensible to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society. . . .
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> * * * *

> The range of activities proscribed . . . embraces nearly every practicable, effective means whereby those interested—including the employees directly affected—may enlighten the public on the nature and causes of a labor dispute. *The safeguarding of these means is essential to the securing of an informed and educated public opinion with respect to a matter which is of public concern.*" 310 U.S. at 103-04 (Emphasis added).

The protection of free expression and association in connection with labor issues has been upheld by this Court time and again, *United Mine Workers* v. *Illinois Bar Assn.*, 389 U.S. 217, 223 (1967) ("First Amendment does not protect speech and assembly only to the extent it can be characterized as political"); *Old Dominion Br. No. 496, Nat. Ass'n of Letter Carriers* v. *Austin*, 418 U.S. 264, 270 (1974) ("[F]reedom of speech . . . has long been a basic tenet of federal labor policy"); *Linn* v. *Plant Guard Workers Local 114*, 383 U.S. 53, 62 (1966) (Congress intended "to encourage free debate on issues dividing labor and management"); *Hague* v. *Committee for Industrial Organization*, 307 U.S. 496 (1939); *Senn* v. *Tile Layers Union*, 301 U.S. 468 (1937).

It is no answer to analogize USWA's rule to the provision of federal election law which bans campaign contributions in federal elections from aliens without resident status, 2 U.S.C. 441e. That statute, of course, reflects considerations of national security which are totally absent here. Further, the ban embodied in 2 U.S.C. 441e is coextensive with the outer limits of First Amendment protection heretofore established by this Court. That is, § 441e bars contributions only from those foreign nationals who do not have U.S. resident status and, accordingly, do not enjoy protection of the First Amendment in any event, *Kwong Hai Chew* v. *Colding*, 344 U.S. 590, 596, n. 5 (1953); *Bridges* v. *Wixon*, 326 U.S. 135, 148 (1945) ("freedom of speech and of press is accorded *aliens residing in this country.*") (Emphasis added). Under that statute, such persons, though not within the "polity" and

thus not able to vote, are not barred from making contributions. USWA's rule in contrast bars contributions from all persons who enjoy First Amendment protection—citizens such as Plaintiffs Sadlowski, Sr., Rubenstein, and Miller, and non-citizen U.S. residents as well—who are not members of USWA. Citizens such as Plaintiffs Sadlowski, Sr., Rubenstein, and Miller, enjoy the full protection of the First Amendment. Though not members of the USWA polity, they have the same constitutionally protected rights of expression and association vis-a-vis USWA elections as would a citizen of New York have with respect to state and local elections, for example, in Pennsylvania and New Jersey. We submit that any restriction banning citizens from contributing to campaigns in other congressional districts, states, and municipalities with respect to which they are not part of the "polity" would be plainly unsustainable under the First Amendment.

We turn now to demonstrate that state action is present and accordingly, if the Court concludes that the rule is not invalid in its entirety under Title I, that it must be invalidated on constitutional grounds.

B. State Action is Plainly Present.

The District Court believed that a finding of state action was foreclosed by this Court's decision in *United Steelworkers of America* v. *Weber*, 443 U.S. 193 (1979) 507 F.Supp. at 626. In *Weber*, however, no constitutional claim was stated and no analysis regarding the presence of "state action" was made. This Court's single sentence by way of introduction, on which the District Court focused, would in no way foreclose such analysis here. The Court in *Weber* said only:

> "Since the Kaiser-USWA plan does not involve state action, this case does not present an *alleged* violation of the Equal Protection Clause of the Fourteenth Amendment." 443 U.S. at 200. (Emphasis added.)

In this case, such analysis would reveal "state action" on at least three alternative bases.

First, Congress has endowed labor unions with extraordinary authority. It has made unions the exclusive representative of the employees for whom they bargain whether the employee desires such representation or not. *J. I. Case Co.* v. *National Labor Relations Board*, 321 U.S. 332 (1944). It has authorized unions to enter into collective bargaining agreements under which the employee must pay dues to the union whether the employee desires to make such payments or not. *National Labor Relations Board* v. *General Motors Corp.*, 373 U.S. 734 (1963). Such authority is governmental in nature; indeed, this Court stated in *Steele* v. *Louisville & N.R.*, 323 U.S. 192 (1944), that the bargaining ". . . representative is clothed with power not unlike that of a legislature which is subject to constitutional limitations. . . ." 323 U.S. at 198; see also, *International Ass'n of Machinists* v. *Street*, 367 U.S. 740 (1961), *Abood* v. *Detroit Bd. of Education*, 431 U.S. 209, 226, 232 (1977). It would seem self-evident that such power, authority and responsibility carries with it the obligation of the union to eschew self-perpetuation and provide those represented with the rights of speech and association necessary to democratic unionism in this "area of the most fundamental First Amendment activities." *Buckley* v. *Valeo*, *supra*, 424 U.S. at 14. The election of union officers is the election of those who will exercise exclusive bargaining power under the federal labor law. The Federal Constitution is clearly violated if Congress has authorized the exercise of such statutory power by officers elected by virtue of unfair election rules that fortify union incumbents' perpetuation in office.

Second, Title IV of LMRDA commands compliance by candidates with specific election regulations and also with the Constitution and By-Laws of the particular union, § 401(e), 29 U.S.C. 481(e), and assigns to the Secretary the duty to file suit to set aside union elections based, not only upon violations of the specific regulations, but also of the Union Constitution and By-Laws, § 402, 29 U.S.C. 482. Such legislation giving coercive effect to rules of

private bodies is an obvious basis for applying constitutional restrictions to rules adopted pursuant to such a statute, *Eoman* v. *Birmingham Transit Co.*, 280 F.2d 531 (C.A. 5, 1960); *Moose Lodge No. 107* v. *Irvis*, 407 U.S. 163, 177-79 (1972); see *Note, State Action: Theories for Applying Constitutional Restrictions to Private Activity*, 74 Colum. L. Rev. 656, 663-66, n. 45 (1974).

Finally, under LMRDA, the Secretary of Labor and the unions are engaged in joint participation in regulation of union elections so as to require a finding of state action pursuant to *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715 (1961). Thus, unions are required by LMRDA to adopt Constitutions and are empowered to make election rules which Title IV clothes with the force and effect of law; and unions are assigned full responsibility in the first instance for seeing to compliance both with their own rules and the specified § 401 standards. The union has exclusive regulatory responsibility over post-election complaints for three calendar months to the preclusion even of receipt by the Secretary of such complaints during that period. The interdependence of the Secretary and the unions in the Title IV regulatory scheme was further heightened by this Court's decision in *Hodgson* v. *L.U. 6799, United Steelworkers of America*, 403 U.S. 333 (1971), holding that the Secretary's Title IV suits can include only grounds which the union in its regulatory capacity had an opportunity to resolve. In *L.U. 6799*, this Court declared that the Act not only seeks to foster, but also *relies upon* union self-regulatory action so as to "avoid unnecessary expenditure of the limited resources of the Secretary of Labor." 403 U.S. at 339. Indeed, in *Wirtz* v. *Hotel, Motel & Club Employees Union, Local 6*, 391 U.S. 492, 498-99 (1968), the Court declared that "Congress *emphatically gave unions the primary responsibility for enforcing compliance* with the Act . . ." and "also settled enforcement authority on the Secretary of Labor to insure that serious violations would not go unremedied and the public interest go unvindicated."

(Emphasis added). The relation between the union and the Secretary is marked by joint participation of the Secretary and the unions at every step of the regulatory process and thus is far more "symbiotic" than that recognized as a basis for finding state involvement in the private action challenged in *Burton*.

Recognition of state action may be predicated on each of these grounds. In their totality, these grounds compel a finding of state action in this case and consequently invalidation of USWA's rule under the First Amendment.

CONCLUSION

USWA's rule is the first of its kind; no other labor organization, either before or since adoption of USWA's rule, has ever adopted a similar election rule. But, USWA's rule will not be the last of its kind should it be sustained. There can be little doubt that some union officers fearful of challenge will urge adoption of similar rules in other unions in order to insulate themselves from electoral challenge. Sadly, the rule will be adopted where the interests of union democracy can least afford it.

The Court of Appeals' decision is wholly consistent with the decisions of this Court and other federal courts and should be affirmed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

UNITED STEELWORKERS OF AMERICA,

Petitioner,

—v.—

EDWARD SADLOWSKI, JR., JOSEPH SAMARGIA, EDWARD SADLOWSKI, SR., LEONARD S. RUBENSTEIN, and JAMES MILLER,

Respondents.

ON WRIT OF *CERTIORARI* TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION, *AMICUS CURIAE,* IN SUPPORT OF RESPONDENT

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INTEREST OF AMICUS CURIAE

The American Civil Liberties Union is a nationwide, non-partisan organization of over 250,000 persons, dedicated to defending and protecting the principles embodied in the Bill of Rights.

Since the late 1940's, the ACLU has worked to ensure that union members would enjoy in their unions rights of free speech, assembly, and association similar to those secured by the First Amendment in the nation at large. The ACLU's 1952 pamphlet, Democracy in Labor Unions, helped catalyze the movement which led eventually to passage of the LRMDA.*/ ACLU analysis of early drafts of the LRMDA Bill of Rights in 1958 played an important role in producing its final revisions. See Joint Appendix, at 150.

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*/ The pamphlet is referred to in the Joint Appendix, at 147.

This case raises an important question concerning the scope, and the strength, of the free speech guarantees Congress provided in the LRMDA. The ACLU's extensive experience in free speech cases, both in the union context and the election finance context, should provide the Court a unique and valuable viewpoint as it decides whether the Steelworkers' bar on outside contributions at issue here impermissibly infringes rights guaranteed in the LRMDA.*/

*/ Letters from the parties consenting to the filing of this brief are being filed with the Clerk.

SUMMARY OF ARGUMENT

Although unions have a valid interest in protecting themselves against improper influence from certain outsiders, the Steelworkers' blanket rule prohibiting all nonmembers, including families and friends, from contributing money to union candidates is far broader than necessary to guard against these dangers. The rule should be invalidated because it overbroadly and unnecessarily impinges upon the freedom of speech and association that § 101(a)(2), 29 U.S.C. § 411(a)(2), guarantees union members.

When it enacted the Labor-Management Reporting and Disclosure Act of 1959 (hereinafter "LMRDA" or "the Act"), Congress intended to ensure union democracy. In Title I of the Act, "The Bill of Rights of Members of Labor Organizations," Congress intended to give substantive

rights to union members like those guaranteed by the Constitution's Bill of Rights, and further intended Title I to serve as a vital tool to ensure that the elections called for in Title IV were free and fair.

The Steelworker rule violates the freedom of speech of union members because the restrictions it places on contributions will severely restrict the expenditures that candidates can make, and thus will significantly curb the quantity of their speech. The rule will prevent many challengers to union incumbents from "amassing the resources necessary to engage in effective advocacy," Buckley v. Valeo, 424 U.S. 1, 21 (1976). Because of the significant advantages that incumbents enjoy in union elections, it will "foreclose any fair opportunity of a successful challenge." Id. at 31 n.33. The Steelworker rule will thus act as an incumbent protection provi-

sion and as an obstacle to union democracy -- contrary to the intent of the LMRDA.

Like the First Amendment, § 101(a)(2) guarantees freedom of association, a right essential to engage in effective advocacy. The Steelworker rule infringes this freedom because it prevents candidates from banding together with others to engage in "effective advocacy" and as a result their "voices w[ill] be faint or lost." Citizens Against Rent Control v. City of Berkeley, 50 U.S.L.W. 4071, 4072 (1981).

The Steelworker rule also violates union members' freedom of association because it unnecessarily and overbroadly prohibits harmless contributions and de minimis contributions from families, friends, and former union members whose contributions would not exert improper influence over candidates or their unions. The Steelworker rule should be invalidated

because the union could have accomplished its goal by adopting far less restrictive yet equally effective means.

ARGUMENT

INTRODUCTION

This case involves a union rule that impinges upon the freedoms of speech and association created and protected in § 101 (a)(2) of the LMRDA, 29 U.S.C. 411(a)(2), by prohibiting candidates for union office from receiving contributions of any amount from any nonmembers.[1/] Amicus ACLU does

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1/ Section 101(a)(2) provides:

> FREEDOM OF SPEECH AND ASSEMBLY -- Every member of any labor organization shall have the right to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution

(footnote continued on following page)

not dispute that contributions from certain categories of contributors pose dangers to union autonomy that Congress has expressly recognized, see, e.g., § 401(g), 29 U.S.C. 481(g),[2/] and we assume for purposes of this case that a union rule narrowly barring such contributions would not be forbidden by § 101(a)(2). The draconian rule successfully challenged below by respondent Sadlowski,

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(footnote continued from preceding page)
and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

These rights of speech and assembly statutorily guaranteed to union members have been interpreted in a manner paralleling their constitutional counterparts. See Helton v. N.L.R.B., 656 F.2d 883, 895 (D.C. Cir. 1981); Maceira v. Pagan, 649 F.2d 8, 18 (1st Cir. 1981); Fulton Lodge No. 2. v. Nix, 415 F.2d 212, 217 (5th Cir. 1969).

2/ Section 401(g) provides that "no moneys of an employer shall be contributed or applied to promote the candidacy of any person" in a union election.

however, is far broader than necessary to avert those dangers. It prohibits harmless contributions from families, friends, and former members whose pensions would be affected directly by decisions made by elected union officials. Contributions from such individuals do not even remotely pose dangers from which the union may lawfully protect itself. Accordingly, without disputing some of the union's concerns, amicus has submitted this brief on behalf of respondent Sadlowski. The disproportion between the serious but relatively narrow and well-defined dangers from which the unions may lawfully protect themselves, on the one hand, and the blunderbuss and hyper-prophylactic means chosen to avert them, on the other, is so great as to warrant invalidation of the rule for substantial overbreadth. In enacting the LMRDA, Congress did not intend to allow

unions to adopt substantially overbroad measures that violate the freedom of speech and of association guaranteed union members by § 101(a)(2).

Regulations governing political speech and association are subjected to overbreadth analysis to ensure that non-injurious speech -- that is, protected speech, speech that does not directly pose substantial dangers -- will not be inadvertently punished or deterred. A state may ban the sale of obscene books, but it may not broadly ban all books to accomplish that goal. A state may have a compelling interest in banning corrupt contributions, but it could not lawfully ban all contributions to serve its purpose. Application of overbreadth analysis is the tool by which that narrow tailoring -- the close fit of means to ends -- is accomplished. Its application to the union election speech context

presented here is essential for precisely the reason it is applied to political speech: to ensure the full protection of all speech and political activity except that for which a compelling need to regulate or deter has been shown.

In this case, the Steelworkers have employed means far more restrictive than necessary to further the objective of limiting the undue influence of outsiders on unions. See generally Shelton v. Tucker, 364 U.S. 479 (1960). Seeking to limit what it claims are improper outside influences, the Steelworkers not only have prohibited many wholly innocent associations between members and nonmembers, but have done so with means so restrictive that nonincumbent union candidates and their supporters will be prevented "from amassing the resources necessary for effective advocacy." Buckley v. Valeo,

424 U.S. 1, 21 (1976).

I. TITLE I OF THE LRMDA AND PARTICULARLY § 101(a)(2) PROVIDE FREE SPEECH RIGHTS ANALOGOUS TO THOSE GUARANTEED IN THE FIRST AMENDMENT TO MAKE TITLE IV'S PROMISE OF FREE AND FAIR ELECTIONS MEANINGFUL.

The legislative history of the LMRDA makes clear that the Act had two key objectives -- to root out union corruption and to make unions more democratic. S. Rep. No. 187, 86th Cong., 1st Sess. 2, 6, 12 (1959); H. Rep. No. 741, 86th Cong., 1st Sess. 2, 6, 9 (1959). These two goals were intimately related: "Congress decided that if the elections are 'free and democratic,' the members themselves [would be] able to correct abuse of power by entrenched leadership." Steelworkers v. Usery, 429 U.S. 305, 312 (1977). The LMRDA sought to insure union democracy in two straightforward ways: by establishing procedures for union elections in Title

IV, see 29 U.S.C. 481, and by giving union members a "Bill of Rights" in Title I, see 29 U.S.C. 411.

The language of Title I demonstrates Congress' intent to foster the democratic character of union elections through incorporating constitutional principles into the LMRDA. Both § 101(a)(1), broadly entitled "Equal Rights", and § 101(a)(2), broadly entitled "Freedom of Speech and Assembly", include express references to labor elections. Congress adopted terms which have been extensively interpreted in constitutional cases. Under settled rules of statutory construction, this incorporation of constitutional language indicated Congress' intention that courts construe these terms consistently with the doctrine developed in these constitutional cases.

The legislative history confirms what the statutory language and simple logic suggest, namely that the congressional purpose in enacting § 101(a)(2) was a primary purpose of the Founders' in adopting the First Amendment: to ensure the democratic character of elections and government.

Introducing his version of the Bill of Rights, Senator McClellan, chairman of the Senate Select Committee on Improper Activities in the Labor-Management Field, explained that the Kennedy-Ives bill, S. 1555, 86th Cong., 1st Sess., which included almost all of what became Title IV, was too weak to protect the rights of union members and ensure that union members would be able to run their unions democratically. Emphasizing that his Bill of Rights was needed to supplement Title IV in important ways, Senator McClellan said that the

> does not adequately meet the needs of union members for the protection of their rights ... I propose therefore ... to offer some strong amendments -- amendments that will be in the interest primarily of workers -- of union members and for their protection; amendments designed to insure greater integrity in the administration and management of union affairs.

105 Cong. Rec. 6472 (1959). He further explained that the rights in his Bill of Rights were to be considered equivalent to those in the Constitution, and that their purpose was to enable union members to clean up their own houses:

> We should give union members their inherent constitutional rights, and we should make those rights apply to union membership as well as to other affairs of life. We should protect the union members in those rights. By so doing we will be giving them the tools they can use themselves.
>
> . . . .
>
> . . . I think we ought to start with the union man, with the worker, and to relieve him from the oppression

> which has been thrust upon him in some places. We should restore to him his rights. We should vest in him again the power to do something to protect his rights. We must give him the authority to run his own union. We must pass a law, such as the measure now proposed, which will enable him to prevent usurpation by would-be exploiters. Let us start to help the worker.

Id. at 6476, 6478 (emphasis added).

Later, after the Bill of Rights had been modified slightly by the Kuchel amendment on which petitioner so heavily relies, Senator McClellan again urged passage of the LMRDA in similar terms. He spoke principally about the benefits that would result from the Act's Bill of Rights:

> The effect of such a law would simply be to carry into the union halls of organized labor throughout the country and make applicable to union members the basic human rights

> and protections that are vouchsafed to all of us by the Bill of Rights to the Constitution of the United States.
>
> What is wrong with that? I tell you there is nothing wrong with it. It compels the arrogant union bosses and dictators to respect the dignity of man; it curbs the arbitrary and excessive powers that many of them have been exercising to suppress and oppress dues-paying members; it restores to union members the democratic processes that they have been denied; and it gives them the tools with which they can help to drive the thieves, racketeers, and criminal elements out of their union.

Id. at 17498 (emphasis added).

Senator McClellan's comments both before and after the Kuchel amendment demonstrate that Congress intended Title I to be not just a shield to prevent reprisals by labor bosses against union members, as the Steelworkers contend, but also a sword, "restoring" rights to enable union members to run their own unions democratically. As Senator McClellan

observed, Title I was a powerful "tool" for supplementing Title IV. Id.

This Court has recognized Congress' intent to ensure union democracy in enacting Title I. Title IV's "special function" was to insure "free and democratic elections," Wirtz v. Local 153, Glass Bottle Blowers Association, 389 U.S. 463, 470 (1968), but Title I as well "was specifically designed to protect the union member's right to seek higher office within the union." Hall v. Cole, 412 U.S. 1, 14 (1973). Explaining the purpose of Title I, this Court wrote:

> In an effort to eliminate ... abuses [by labor bosses], Congress recognized that it was imperative that all union members be guaranteed at least "minimum standards of democratic process ...." Thus, Title I of the LMRDA -- the "Bill of Rights of Members of Labor Organizations" -- was specifically designed to promote the "full and active participation by the rank and file in the affairs of the

> union," and, as the Court of Appeals noted, the rights enumerated in Title I were deemed "vital to the independence of the membership and the effective and fair operation of the union as the representative of its membership." 465 F. 2d at 780.

Id. at 7-8 (footnotes omitted).[3/]

In short, and contrary to the principal argument pressed by the union, not only Title IV, but also and importantly the free speech provision and other provisions of Title I, play an important role in maintaining the democratic character of union elections.[4/]

3/ See generally Maceira v. Pagan, 649 F.2d 8, 18 (1st Cir. 1981); Grand Lodge of International Association of Machinists v. King, 335 F.2d 340, 344 (9th Cir. 1964).

4/ Kupau v. Yamamoto, 622 F.2d 449, 453 (9th Cir. 1980); see also Calhoon v. Harvey, 379 U.S. 134, 141 (1964)(Stewart, J. concurring)("In part, both [Title I and Title IV] seem to deal with the same subject matter"). Cf. Note, Pre-Election Remedies Under the Landrum-Griffin Act: The "Twilight Zone" Between Election Rights
(footnote continued on following page)

It is not hard to see why Congress felt confident that § 101(a)(2)'s guarantee of free speech and assembly for union members in the election context would serve its purpose at least as well as other proposed remedies, such as increased federal

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(footnote continued from preceding page) Under Title IV and the Guarantee of Titles I and V, 74 Colum. L. Rev. 1105, 1125 (1974) (footnotes omitted):

> Although Title I was introduced in response to the inadequacies of the Title IV measure, Congress gave little express consideration to the interrelationship of Title I and IV. It should not be assumed, however, that legislators who were determined to transplant constitutional guarantees into the internal union area, despite the intensive lobbying efforts of organized labor, intended to render Title I nugatory with respect to all election-related practices.

supervision and control of union elections, which were rejected. The role of the First Amendment freedoms in securing open and meaningful elections has long been recognized. A major purpose of freedom of speech has been to "protect the free discussion ... of candidates," Mills v. Alabama, 384 U.S. 214, 218 (1966), and free speech "has its fullest and most urgent application precisely to the conduct of campaigns for political office." Monitor Patriot Co. v. Roy, 401 U.S. 265, 272 (1971). Unless candidates and their supporters can engage in effective free speech, elections (in the union context or any other) will prove a hollow process, a barren formality.

Based on this concern for free discussion of political candidates, this Court has consistently noted the dangers that contribution limitations would

severely affect political dialogue if they prevented candidates from amassing resources necessary for effective advocacy. See, e.g., Buckley v. Valeo, 424 U.S. at 21.

Although neither Title I nor Title IV explicitly addresses the issue of campaign contributions by outsiders, Congress' intent to protect union democracy indicates that union candidates are to be guaranteed an opportunity to amass the necessary resources to engage in "effective advocacy". Cf. Buckley v. Valeo, 424 U.S. at 21. Congress would hardly have relied on democratic elections as its chosen means of cleaning up corrupt unions, and yet allowed that process to be short-circuited by forbidding challengers the means to make such challenges effective. The District of Columbia Circuit noted below, after examining the legislative

intent, that

> [o]btaining some outside support would be a practical necessity in many cases if members were to have any realistic opportunity to oust such corrupt and dictatorial incumbents, as the Select Committee found in some of the unions it examined.

Sadlowski v. Steelworkers, 645 F.2d 1114, 1124 (D.C. Cir. 1981).

II. THE STEELWORKER RULE IS REPUGNANT TO THE LMRDA BECAUSE IT INFRINGES UPON THE FREEDOM OF SPEECH OF UNION MEMBERS AND WILL PREVENT CANDIDATES AND THEIR SUPPORTERS FROM ENGAGING IN EFFECTIVE ADVOCACY.

As we have shown above, Senator McClellan's proposed Bill of Rights was written to give union members the "inherent constitutional rights" that the United States Constitution gives all Americans. 105 Cong. Rec. 6476 (1959). Similarly, in enacting Title I's free speech provision, Congress aimed to give union mem-

bers rights "parallel[ing] the rights conferred under the First Amendment." Helton v. N.L.R.B., 656 F.2d 883, 895 (D.C. Cir. 1981); see also Maceira v. Pagan, 649 F.2d 8, 18 (1st Cir. 1981); J. Bellace & A. Berkowitz, The Landrum-Griffin Act: Twenty Years of Federal Protection of Union Members' Rights, 9 (1979). See also Salzhandler v. Caputo, 316 F.2d 445 (2nd Cir.), cert. denied, 375 U.S. 996 (1963). The LMRDA guarantee of free speech is a "codification of some of our most basic liberties," International Association of Machinists v. Loudermilk, 444 F.2d 719, 723 (5th Cir. 1971), and has been "broadly construed." Id. The right of free speech for union members "enjoy[s] a particularly favored position," Fulton Lodge No. 2 v. Nix, 415 F.2d 212, 217 (5th Cir. 1969), in order "to foster truly democratic governance of unions." Semancik v. United Mine Workers,

District 5, 466 F.2d 144, 153 (3rd Cir. 1972). As commentators have noted, "[t]he Landrum-Griffin Act provides perhaps its most far-reaching protection in the areas of speech and assembly," J. Bellace & A. Berkowitz, The Landrum-Griffin Act: Twenty Years of Federal Protection of Union Members' Rights 32 (1979).

Just as the First Amendment "has its fullest and most urgent application precisely to the conduct of campaigns for public office," Monitor Patriot Co. v. Roy, 401 U.S. 265, 272 (1971), so too should § 101(a)(2), the LMRDA's First Amendment counterpart, have its broadest interpretation and application in the context of union campaigns. In Buckley v. Valeo, 424 U.S. at 14, this Court underlined the importance of giving freedom of speech a broad scope in the election context:

> Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order "to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people." Roth v. U.S., 354 U.S. 476, 484 (1957).

Because union officials, through bargaining over wages, hours and conditions of employment and the processing of grievances, likely have even more direct influence over the daily lives of union members than government officials have over the general populace, § 101(a)(2) must be construed broadly "to protect the free discussion of ... candidates ...." Mills v. Alabama, 384 U.S. 214, 218 (1966).

By placing limits on contributions and therefore limiting expenditures, the Steelworker rule severely impairs freedom of expression. See Citizens Against Rent

Control v. City of Berkeley, 50 U.S.L.W. 4071, 4074 (1981); Buckley v. Valeo, 424 U.S. at 21. The rule shuts off a critically important source of funding for many union candidates, especially those challenging entrenched leaderships. It thereby severely curbs the ability -- and thus the freedom -- of candidates and their supporters to engage in effective advocacy. Because of the substantial advantages that a union incumbent has over a challenger, a rule like the Steelworkers' rule will serve as an incumbent's protection provision. See generally James, Union Democracy and the LMRDA: Autocracy and Insurgency in National Union Elections, 13 Har. Civ. Rts. C.L.I. Rev. 247, 281-282 (1978)(hereafter cited as James); Note, Union Elections and the LMRDA: Thirteen Years of Use and Abuse, 81 Yale L.J. 409, 452-468 (1972)(hereafter cited as Note).

The disadvantages that union candidates face in challenging incumbents are substantial, paralleling those this Court discerned in Buckley v. Valeo for challengers to federal incumbents. See Buckley, 424 U.S. at 31 n.33. Incumbents have control over the union staff and often use it to their advantage during a campaign. Note, supra, at 462, 465. Incumbents can also expect generous contributions of money from staff members, most of whom they have appointed. Id. at 464; James, supra, 13 Har. Civ. Rts. C.L.L. Rev. 247, 331 (1978). For example, in the 1977 race for the presidency of the Steelworkers, Lloyd McBride, who had the endorsement of the retiring incumbent, received 90 percent of his campaign funding from contributions made by staff members, many of whom gave $500 or $1,000. (JA 173, 347-348). Incumbents also control union

newspapers, printing presses, and telephones. Note, supra, at 454, 461. "Through their virtual monopoly over the means of communications within the union, its physical and financial resources, and its leadership and administrative skills, incumbents possess a significant advantage in any electoral contest." Id. at 419-420.

While incumbents receive generous contributions from staff members, challengers usually have a hard time getting money from the staff because staffers often fear that incumbents will fire them if they donate to challengers. Id. at 446; see also, e.g., Grand Lodge of International Association of Machinists v. King, 335 F.2d 340 (9th Cir. 1964)(officers discharged for supporting challenger).[5/] In addition,

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5/ It is instructive that in the 1977 campaign for the presidency of the Steelworkers, only three percent of the staff contributed
(footnote continued on following page)

union members are often reluctant to contribute to the campaigns of challengers because the union members fear possible reprisals by incumbents, such as being switched to worse shifts or not having their grievances vigorously pursued. Note, supra, at 444-448. In view of these significant advantages that union incumbents have over challengers, the Steelworker rule against contributions by outsiders plainly "foreclose[s] any fair opportunity of a successful challenge." Buckley v. Valeo, 424 U.S. at 31 n.33.

The Steelworkers could have met their objective of limiting undue outside influence on their union through less restric-

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(footnote continued from preceding page) to Edward Sadlowski's campaign even though he garnered 43 percent of the membership's vote. The staff gave Sadlowski only $5,000, while it gave McBride $160,000. (JA 128, 345).

tive ways that would not have prevented candidates from engaging in effective advocacy. For example, the Steelworkers could have adopted a disclosure system requiring candidates to reveal the identities and contributions of all outside contributors. Cf. Buckley v. Valeo, 424 U.S. at 84 (upholding contribution disclosure requirement). Similarly, the Steelworkers could perhaps have set a reasonable ceiling on the amount of money that an outsider could contribute. Cf. id. at 35 (upholding contribution limits for individuals). These alternatives and others like them would meet the Steelworkers' goal of curbing improper outside influence without violating a challenger's freedom of speech by preventing him from "amassing the resources necessary for effective advocacy." Id. at 21.

Because the Steelworker rule creates

"substantial rather than merely theoretical restraints on the quantity and diversity of political speech," id. at 22, and because it will prevent condidates and their supporters from "amassing the resources necessary for effective advocacy," id. at 21; the challenged rule should be invalidated.

III. THE STEELWORKER RULE IS AN OVERBROAD AND OVERRESTRICTIVE INFRINGEMENT OF THE FREEDOM OF ASSOCIATION THAT § 101(a)(2) GUARANTEES UNION MEMBERS

A. § 101(a)(2) Guarantees Union Members Freedom of Association, Including Freedom to Associate With Nonmembers.

As we have shown above, in enacting Title I's provision for freedom of speech and freedom of assembly, Congress intended to give union members rights that "parallel the rights conferred under the First Amendment." Helton v. N.L.R.B., 656 F.2d at 895. There is no doubt that Congress

intended to include freedom of association as an implicit part of the First Amendment's freedom of speech, within the rights guaranteed by § 101(a)(2).[6] Sadlowski v.

6/ This Court has repeatedly recognized a "generous zone of First Amendment protection reserved for associational freedoms." In re Primus, 436 U.S. 412, 431 (1978). See also Buckley v. Valeo, 424 U.S. at 15, 25. The constitutional right of association grew out of the Court's recognition that "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group associaton," NAACP v. Alabama, 357 U.S. 449, 460 (1958).

This Court has discerned an intimate relationship between the freedom of association and the freedom to contribute to causes and candidates in which one believes. Citizens Against Rent Control v. City of Berkeley, 50 U.S.L.W. at 4073, Buckley v. Valeo, 424 U.S. at 22. Because "[m]aking a contribution ... enables like-minded persons to pool their resources in furtherance of common political goals," Buckley v. Valeo, 424 U.S. at 22, limitations upon the freedom to contribute "implicate fundamental First Amendment interests." Id. at 23. Indeed, the freedom of association "is diluted if it does not include the right to pool money through contributions, for funds are often essential if 'advocacy' is to be truly or optimally 'effective.'" Id. at 65-66.

Steelworkers, 645 F.2d 1114, 1120-21 (D.C. Cir. 1981); Ostrowski v. Utility Workers Local 1-2, 104 L.R.R.M. 2343, 2349-51 (S.D.N.Y. 1980). The legislative history could hardly be clearer. Introducing the Bill of Rights, Senator McClellan observed:

> Our basic labor policy is grounded in freedom of choice. In it we sought to make effective full freedom of association, with the right to associate or not to associate, to participate in collective action, or not to participate, according to the free decision of each individual for himself, without either restraint or coercion from any source ....

105 Cong. Rec. 6472 (1959)(emphasis added). Senator McClellan also made clear that freedom of association guaranteed by § 101 (a)(2) also included the freedom to associate with non-members. He said that the provision would give

> union members the right to assemble in groups, if they like, and to visit their neighbors

> and to discuss union affairs, and to say what they think or perhaps discuss what should be done to straighten out union affairs, or perhaps discuss the promotion of a union movement, or perhaps a policy in which they believe.

105 Cong. Rec. 6477 (1959)(emphasis added).

B. The Steelworker Rule Violates The Freedom of Association of Candidates and Their Supporters Because It Overbroadly Prohibits Them From Associating With Non-members To Engage In Effective Advocacy.

Government actions "which may have the effect of curtailing the freedom of association are subject to the closest scrutiny," NAACP v. Alabama, 357 U.S. 449, 460-61 (1958). This demanding scrutiny of governmental actions impinging on freedom of association has specifically been applied in the election finance context. See generally Buckley v. Valeo, 424 U.S. at 22. For precisely the same reasons, union actions restricting their members' freedom of association should be subject to the closest review. As this Court has recently observed in a similar context,

> [t]o place a spartan limit -- or indeed any limit -- on

> individuals wishing to band together to advance their views ... is clearly a restraint on the right of association.

Citizens Against Rent Control v. City of Berkeley, 50 U.S.L.W. at 4073. The Steelworker provision is clearly a rule restricting associational freedoms because it places "a spartan limit" on the ability of union members "to band together" with others to advance their views.

Limitations on contributions restrict the rights of the candidate and his or her supporters to associate with contributors. Cf. id. citing Buckley v. Valeo, 424 U.S. at 65-66 (freedom of association of committee members diluted by restrictions on pooling money). A contributor might have money, and share the goals of an insurgent candidate; the candidate might have intense local rank and file support, but insufficient money to effectively bring his message to national membership.

But so long as limitations are placed on this mutual association, the candidate, his supporters, and the contributor will all lose. Where freedom to associate is guaranteed, on the other hand, together they may have an effective voice. This Court recognized the truth of this proposition when it wrote that the value of political association

> is that by collective effort individuals can make their views known, when, individually, their voices would be faint or lost.

Id. at 4072.

The test governing political contribution limitations applicable here, we believe, should be that articulated by this Court in Buckley v. Valeo, 424 U.S. at 21-24. There, the Court indicated that a contribution limitations would likely violate freedom of association if it "prevented candidates and political

committees from amassing the resources necessary for effective advocacy." Id. at 21.

The Steelworker rule should be voided precisely because it will prevent union candidates and their supporters from gathering together the requisite resources to engage in "effective advocacy" in their election campaigns against incumbents. Because incumbents have such substantial advantages over challengers in union elections, Note, supra, at 452-458, the Steelworker rule, by denying challengers and their supporters monies they need to wage an effective campaign, stands as a formidable barrier to union democracy. Among the advantages that incumbents have in union elections are control over the paid staff, id. at 462, 465, the expectation of generous contributions of money from staff members, id. at 464, and control

over the union newspaper, printing presses, and telephones, id. at 454, 461. One commentator observed that a candidate running against an incumbent

> requires considerable outside help. The exigencies of time and the inability of rank-and-file members to take fulltime leaves of absence create a need for outside campaign staff. To pay the salaries of these workers the candidate must look outside the union for financial support .... [S]o long as resource abuses by incumbents are widespread, insurgents will require outside assistance to run viable campaigns.

James, supra, 13 Harv. Civ. Rts. C.L.L. Rev. at 281-282.

Unless candidates and their supporters are allowed to receive contributions from outsiders to challenge incumbents, the freedom of speech guaranteed by § 101(a)(2) will prove empty and the elections guaranteed by Title IV will prove a charade. By curtailing the freedom of candidates and

their supporters "to associate with others for the common advancement of political beliefs and ideas," Kusper v. Pontikes, 414 U.S. 51, 56 (1973), and by preventing them from "amassing the resources necessary for effective advocacy," to challenge incumbents, Buckley v. Valeo, 424 U.S. at 21, the Steelworker rule violates the freedom of association guaranteed union members by § 101(a)(2).

C. The Steelworker Rule Is Fatally Overbroad And Overrestrictive Because It Prohibits Harmless Associations Between Union Members And Nonmembers.

In support of the rule, the Steelworkers assert that contributions from outsiders present dangers to the integrity of their union. We do not dispute the importance of the union's interest in protecting itself from outside influence by its members' employers. But the challenged

rule sweeps far more broadly than is reasonably necessary to avert that danger. Indeed, by enacting § 401(g) of the LMRDA, 29 U.S.C. 481(g), Congress has already gone a long way toward averting that danger by explicitly prohibiting employers from contributing to candidates in union elections.7/

The Steelworker rule is overbroad because it wholly prohibits contributions from family members, friends, and pensioners, even though there is no showing or reason to believe that the dangers of undue employer influence are posed by any of the contributions which such

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7/ We do not contend that § 401(g) entirely pre-empts union attempts to avert undue employer influence. There is room under § 101(a)(2) for unions to pass reasonable rules to ensure compliance with its mandate. A reasonable rule requiring disclosure of outside contributions, for example, would be permitted.

individuals have or would make. Respondent Sadlowski properly points to the ban on even his father's contributions -- those of a pensioner whose economic well-being is directly affected by the decisions of elected Steelworker officials -- as the clearest example of the gross overbreadth of the challenged rule. The rule lacks the "precision of regulation [which] must be the touchstone in an area so closely touching precious freedoms." NAACP v. Button, 371 U.S. 415, 438 (1963).

The Steelworkers assert that they banned contributions from such harmless sources as friends and family members in order to make it easier for the union to monitor all campaign contributions. But the slight gain in convenience that arguably would result from a blanket rule banning contributions from family and friends can hardly excuse such a drastic abridgement

of a candidate's right to associate with harmless outsiders. Cf. Shapiro v. Thompson, 394 U.S. 618, 636-638 (1969)(administrative convenience insufficient to save a regulation that abridges fundamental rights); Memorial Hospital v. Maricopa County, 415 U.S. 250, 267-269 (1974)(id.); In Re Primus, 436 U.S. 412, 437-38 (1978) (broad prophylactic rules impermissible in First Amendment context.)

The Steelworker rule is also fatally overbroad because it prohibits contributions of any amount whatsoever, even though modest contributions could not possibly exert improper influence over candidates or unions. The rule would prevent a candidate from selling a one dollar raffle ticket to a neighbor to help him finance his campaign. It would prohibit a candidate from receiving a contribution of ten dollars from a former union member retired due to an injury, but eager to help his

former union by helping to elect someone who once did a splendid job years earlier in handling the retiree's grievance over his injury. Nor could a candidate accept a donation from a laid-off steelworker who has dropped out of the union because there are no steel jobs for him, but who wants to return to the industry and union and wants to contribute money to the candidate because he thinks the candidate has excellent ideas for creating new steel jobs in the area.

All these potential contributions represent harmless associations between the candidate and potential contributors who have no purpose of seeking improperly to influence the candidate or union policy. Nevertheless, all such contributions, both subjectively and objectively harmless, are banned. A clearer example of substantial overbreadth, or a more compelling

occasion for the application of overbreadth analysis can hardly be imagined.

Ample "less drastic means" exist for achieving the union's valid goal of limiting improper outside influence. A disclosure system, for example, would warn voters of any outsiders who might be seeking to exert undue influence over the union. Cf. Buckley v. Valeo, 424 U.S. at 84 (upholding contribution disclosure requirement). A disclosure system would neither interfere with harmless association nor prevent a candidate from amassing the resources needed to engage in effective advocacy, while furthering the goal of limiting proper outside influence. Similarly, the union could perhaps impose some reasonable limit on the amount of money that any outsider could contribute to a candidate. Cf. id. at 35 (upholding contribution limits for individuals). This less restrictive alternative would impose far more

moderate restraints on associational interests, and yet would prohibit outsiders from contributing sums of such a size as to yield some influence over the candidates. In the area of fundamental freedoms, such as the freedom of association, a union, like "government[,] has the duty to confine itself to the least intrusive regulations which are adequate for the purpose." Lamont v. Postmaster General, 381 U.S. 301, 310 (1965) (Brennan, J., concurring).

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

Respectfully submitted,

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